UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/56
29 January 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in the territory of the former Yugoslavia

Periodic report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 45 of Commission resolution 1996/71

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Introduction

1. The present report, prepared in January 1997 to ensure its timely submission to the Commission on Human Rights, at its fifty-third session considers human rights developments in the territory of the Special Rapporteur's mandate until early 1997. The Special Rapporteur intends to provide an update on the situation to the Commission on Human Rights when it meets in Geneva from 10 March to 18 April 1997.

2. Since the fifty-second session of the Commission on Human Rights, the Special Rapporteur has submitted four reports to the Commission including the present one. The first, dated 17 July 1996 (E/CN.4/1997/5), considered the human rights situation in Bosnia and Herzegovina in anticipation of elections which took place on 14 September 1996. The Special Rapporteur then submitted two major reports in October 1996 (E/CN.4/1997/8 and E/CN.4/1997/9) prepared in part for the benefit of the General Assembly at its fifty-first session. The first of these reports considered in depth the situation of minority populations in the Federal Republic of Yugoslavia and the Republic of Croatia, while the second addressed human rights developments generally throughout the area of the Special Rapporteur's mandate. The present report should be viewed as a follow-up to the general report of October 1996.

3. Between 1 October and 31 December 1996 the Special Rapporteur conducted three missions to the territory of the former Yugoslavia. The first, in October, included visits to the Federal Republic of Yugoslavia (including the province of Kosovo), the region of Eastern Slavonia in Croatia and Sarajevo, while the second, in November, included Zagreb and destinations in both entities of Bosnia and Herzegovina. The third mission, made on 7 and 8 December, took the Special Rapporteur to Sarajevo, where she delivered a keynote address to the Inaugural Conference of the University of Sarajevo Human Rights Centre. The Special Rapporteur also took the opportunity during the last months of 1996 to attend and address other significant gatherings with human rights on the agenda, including the fifty-first session of the General Assembly in New York, the Peace Implementation Conference for Bosnia and Herzegovina held in London on 4 and 5 December 1996, and the meeting of the Humanitarian Issues Working Group convened by the United Nations High Commissioner for Refugees (UNHCR) in Geneva, on 16 December 1996.

4. The Special Rapporteur is pleased to report that she continues to receive generally good cooperation from all Governments covered by her mandate. Cooperation has also been good with international organizations and international and local non-governmental organizations active in the region. A list of interlocutors with whom the Special Rapporteur has met on her missions is attached to the present report. The Special Rapporteur's primary source of support remains the Human Rights Field Operation in the Former Yugoslavia (HRFOFY) of the High Commissioner/Centre for Human Rights, which renders her invaluable assistance both in gathering and analysing human rights information and coordinating her missions to the territory. This support is provided in accordance with pertinent United Nations resolutions, including the most recent resolution of the General Assembly, resolution 51/116, in which the Assembly commended the Special Rapporteur and the HRFOFY for their continuing combined efforts. The HRFOFY is headquartered in Sarajevo, Bosnia and Herzegovina, and has field offices in Banja Luka (Bosnia and Herzegovina),

Zagreb and Vukovar (Republic of Croatia), Belgrade (Federal Republic of Yugoslavia) and Skopje (the former Yugoslav Republic of Macedonia).

5. The Special Rapporteur wishes to note that the Commission on Human Rights requested her, by resolution 1996/71, to maintain contact with the authorities of the former Yugoslav Republic of Macedonia (FYROM). In this connection she visited the country on 13 and 14 January 1997. The Special Rapporteur will communicate to the Commission her observations and recommendations concerning FYROM at its fifty-third session.

I. BOSNIA AND HERZEGOVINA

6. More than a year after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina ("the Dayton Agreement"), a fragile peace continues to hold in the country. The parties have for the most part abided by the military commitments they undertook by signing the agreement. There has also been some progress in the implementation of the Dayton Agreement's provisions affecting human rights, notably in the creation of national institutions such as the Commission on Human Rights. However, much remains to be achieved. In certain key areas, such as the return of refugees and displaced persons to their homes, there have been only minimal advances during the past year. Bosnia and Herzegovina remains a divided country, with borders not very different from confrontation lines between the entities, and nationality-based discrimination and violence common throughout the territory. The following discussion details many of the human rights problems which continued to cause suffering in Bosnia and Herzegovina at the end of 1996.

7. At the outset, it is essential to re-emphasize the central role that human rights questions will play in the success or failure of the entire Dayton peace process. As noted by the Special Rapporteur in previous reports, demonstrated respect for human rights - more than cease-fires, more than reconstruction - is the foundation essential to a lasting peace. Developments in this crucial area over the past year make it uncertain whether the peace which was so painstakingly won in 1996 will endure beyond the withdrawal of the international military force led by the North Atlantic Treaty Organization (NATO). For this reason, 1997 will be a year of supreme importance. Looking ahead to the spring, progress on human rights will be especially critical for the legitimacy of Bosnia and Herzegovina's municipal elections, now scheduled for June 1997. Without improvement in the fundamental areas of freedom of movement, expression and association, the elections' results will fairly rapidly be called into question and could further jeopardize ongoing efforts towards lasting peace.

A. Freedom of movement

8. The Dayton Agreement expressly commits the parties to ensuring freedom of movement and incorporates international law guaranteeing this right, such as the International Covenant on Civil and Political Rights (at article 12) and the Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (at article 2). Nevertheless, restrictions on movement are common in Bosnia and Herzegovina, particularly along the Inter-Entity Boundary Line (IEBL) but also between territories controlled by Bosniak and Bosnian Croat authorities within the Federation.

9. Federation traffic between Sarajevo and Gorazde, passing through Rogatica and crossing territory under Republika Srpska administration, remained at great risk at the end of 1996. Vehicles travelling along this road faced a constant threat of attack by stone-throwers throughout the whole of the year. The International Police Task Force (IPTF) reported that the problem was difficult to control since efforts to stop attacks at one location merely resulted in those responsible moving to other locations along the route. Republika Srpska police have failed to take effective action to stop these attacks. Federation-registered ambulances travelling on this road were struck on 7 December and again on 15 December 1996, and a Bosniak man was injured in the head when the bus in which he was travelling was hit by rocks on 19 December 1996.

10. In late December 1996 increasing harassment of non-Serb travellers was noted in the area of Mrkonic Grad in the Republika Srpska. Several incidents were reported, including one on 24 December 1996 in which police detained several travellers, confiscated their documents and demanded payment of money for their return. Republika Srpska police, along the IEBL, at international borders and within the entity itself, were further reported to be imposing visa "fines" of DM 45 on non-Serbs seeking to enter or transit the territory. In Odzak, meanwhile, Bosnian Croat police arrested four Bosnian Serb travellers on 17 December 1996 and only released them the next day following the Republika Srpska's release of three Bosnian Croat soldiers previously arrested at Doboj.

11. Obstacles to free movement have been noted in the Federation of Bosnia and Herzegovina, for example along the road from Mostar to Capljina, where bus service provided by UNHCR was suspended in late November 1996 because of repeated stoning incidents along the route.

12. The Special Rapporteur is deeply concerned about arrests of travellers for alleged complicity in war crimes, which have sometimes been made with little apparent basis and in violation of provisions of the so-called "rules of the road" agreed to by the parties at Rome in February 1996. Under that agreement, non-indicted war crime suspects are to be held only following notification by the International Criminal Tribunal at The Hague that a basis for such detention exists. Arrests violating this agreement have caused great fear on both sides of the IEBL and imperilled freedom of movement throughout Bosnia and Herzegovina.

13. Freedom of movement will be essential for the success of the municipal elections now scheduled for June 1997. The Dayton Agreement envisioned that persons would be able to vote in the communities in which they resided at the beginning of the war. In national elections on 14 September 1996, however, international organizers could only arrange for polling stations to be placed far from community centres, and displaced voters were transported to them under heavy guard by bus from the other side of the IEBL. After voting, these persons were promptly returned back across the IEBL, showing the present limitations on freedom of movement.

B. Right to voluntary return

14. The Dayton Agreement, at annex 7, guarantees all refugees and displaced persons the right freely to return to their homes of origin. The choice of destination shall be up to the individual or family, consistent with article 12 of the International Covenant on Civil and Political Rights providing for free choice of place of residence to all persons lawfully within a State's territory. Despite these provisions, serious obstacles to return still exist in Bosnia and Herzegovina. Of more than 2 million citizens who have been displaced or driven from the country, UNHCR estimates that only some 250,000 have returned to their homes, most in so-called "majority areas" controlled by authorities of their own national group.

15. In her last report the Special Rapporteur described violent events which had taken place in the Zone of Separation (ZOS) between the entities at Jusici, when a group of displaced Bosniaks attempted to inspect homes for the purpose of return without obtaining prior clearance from Republika Srpska authorities. Disturbances in the ZOS continued in late 1996, for example at the village of Gajevi, near Koraj, where several hundred Bosniaks attempted to gain entry without prior clearance on 11 November 1996. Gunfire resulted in the wounding of several persons on both sides and one reported death, although the Special Rapporteur has been unable to confirm the fatality. International organizations objected to the attempted return at Gajevi as violating procedures which had been carefully drawn up following the Jusici incident, and further returns in the ZOS were suspended until the end of November 1996.

16. The Special Rapporteur visited Gajevi on 26 November 1996 and met with local authorities and representatives of international organizations, as well as with prospective returnees themselves. She emphasized the right of displaced persons to return to their homes but stressed the importance of following established procedures to avoid violence and human rights abuses. The Special Rapporteur also visited the village of Kopriva, in the ZOS near Sanski Most, where she met with a group of prospective returnees of Serb nationality. Some of these persons had attempted to return to areas under Federation control but had re-abandoned their homes following incidents of looting and other forms of intimidation.

17. Prospects for returns to the ZOS have been seriously damaged by the wide-scale deliberate destruction of abandoned homes. In the Prijedor area of the Republika Srpska in October, at least 96 houses belonging to non-Serbs were reported destroyed in a well-organized campaign conducted in a matter of days.

18. Despite these continuing difficulties a small number of successful cross-IEBL visits for home inspections have taken place in both directions, including on 22 December 1996 when some 30 Bosniaks crossed into the Republika Srpska to visit four villages near Prijedor, and on 28 December 1996 when some 24 Bosnian Serbs visited homes at Velja Meda in the Federation.

19. Within the Federation also, returns have been obstructed by the deliberate destruction of homes, particularly in Bosnian Croat-controlled territory. Explosions damaged several Bosniak-owned houses in Capljina and Stolac, and buses transporting displaced Bosniaks to these towns for home

inspections were stoned by local residents on several occasions. Bombings of Croat-owned homes were reported in the Bosniak-controlled towns of Konjic and Vares.

20. Although progress on returns so far has been slim, the Special Rapporteur draws encouragement from an initiative of a group of citizens of Bosnia and Herzegovina, called the "Coalition for Return". The project brings together displaced persons from all areas of the country to work on a united approach to returns, including by sharing information between the entities. The Coalition has held successful meetings in Sarajevo, Mostar and Banja Luka, facilitated by the Office of the High Representative and UNHCR and attended by persons from both entities in Bosnia and Herzegovina and from Croatia and the Federal Republic of Yugoslavia.

C. Right to personal security and freedom from discrimination

21. The Dayton Agreement as well as numerous international instruments, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention for the Protection of Human Rights and Fundamental Freedoms, provide for the right to personal security and freedom from discrimination based on national or social origin and other factors. Since the submission of the Special Rapporteur's last report, however, she has learned of numerous incidents of harassment and threats on the basis both of national origin and political opinion.

22. Violations of the right to personal security have been especially alarming in Mostar, where beatings, unlawful evictions and other forms of harassment have taken place in recent months on an almost daily basis, mostly on the western, Bosnian Croat-controlled side of the city. It is of particular concern that strong evidence links soldiers of the Bosnian Croat army (the HVO) to many of these illegal acts.

23. On 21 December 1996 a Bosniak man reported that the locks of his west Mostar flat had been changed while he was absent, and four uniformed men had taken possession of the premises. When he encountered the men in a hallway they seized him, held a gun to his head, robbed him, forced him into a car and drove him to an outlying village, where they left him after threatening to kill him if he tried to return. In a particularly egregious incident, the IPTF found an HVO soldier and his family occupying the apartment in west Mostar of a 71-year-old invalid Bosniak woman who had been missing since 24 December 1996. Although there were signs of forced entry the soldier claimed to have paid for the apartment, which still contained the belongings of the missing woman. The woman was later found dead in an abandoned building, and international authorities believe she may have died of heart failure resulting from her forcible eviction. The IPTF was continuing its investigation of this case at year's end and demanding appropriate action by local police authorities.

24. Harassment and intimidation of Bosniaks in the Teslic area of the Republika Srpska continued toward the end of 1996, with an increase recorded of incidents of arson, grenade attacks, verbal threats and physical assaults. It was reported, however, in late December that a leader in the campaign

against minorities in the Teslic area, a member of the notorious "Red Beret" paramilitary force, was relieved of his duties in the local civil defence organization. Bosniaks were reported in late December also to have been expelled from homes in the Republika Srpska towns of Bosanska Gradiska and Kotor Varos. At Novi Grad, the house of the local head of the Merhamet humanitarian organization was severely damaged by explosives on 28 December 1996.

25. Harassment of non-Bosniaks has been an ongoing problem in Sarajevo, where Bosnian Serbs have been pressured to abandon their properties, and in Bugojno, where local authorities persist in failing to take action against intimidation and discrimination targeting Bosnian Croats. Bugojno, whose local authorities were strongly criticized in a report by the Federation Ombudsmen, has been denied non-humanitarian economic assistance by international donors since April 1996 due to discriminatory policies which have been implemented there (see sect. D, below).

26. Intimidation based on political opinion remains frequent in the Bihac region of north-west Bosnia and Herzegovina, where past supporters of the breakaway Abdic regime have been victims. The Special Rapporteur, who visited the region on 21 and 22 November 1996, has learned of numerous cases of apparent human rights abuses, including at least 30 bomb attacks against houses of Abdic supporters. Local police are reported to have taken virtually no action in response to these incidents even though the perpetrators are often known. In some cases, police have been alleged to be perpetrators themselves.

27. At a round-table discussion chaired by the Special Rapporteur in Banja Luka on 23 November 1996, representatives of Republika Srpska opposition parties described various forms of harassment and pressure they have suffered on account of their political views, including demotions, dismissals and evictions.

D. Property rights

28. Respect for property rights will be central to achieving the Dayton Agreement's fundamental goal of the safe and voluntary return of refugees and displaced persons to their places of origin. The Dayton Agreement called on the parties to repeal domestic legislation and administrative practices interfering with property rights and the right to return. However, property laws which conflict with the Dayton Agreement remain in effect in both entities. The majority of complaints received by international human rights monitors and national human rights institutions relate to various forms of property rights violations.

29. In November 1996 the Special Rapporteur undertook a joint mission with the Office of the Federation Ombudsmen to Bugojno, where property questions are among the local population's main concerns. The local leadership including the mayor were found on this visit to be extremely uncooperative. Information gathered on the visit strongly indicated that property laws are enforced in a discriminatory way, with harmful consequences especially for the

Bosnian Croat minority population. Many Bosnian Croats have been unable to regain possession of their pre-war homes, while others have been evicted from residences which they continued to occupy during the war.

30. In one disturbing case brought to the Special Rapporteur's attention, a woman refugee voluntarily repatriated from Switzerland in November 1996 and attempted to re-occupy her home in Bugojno, only to be forcibly evicted following a decision by local authorities that the property was in her husband's - not her own - name and thus did not belong to her. The eviction was carried out despite a strong intervention by the Office of the Federation Ombudsmen arguing that the decision was unlawful. Similar cases of discrimination concerning property rights have been observed elsewhere in the Federation, including in Sarajevo and Vares (under the effective control of Bosniak authorities) and Capljina and Stolac (controlled by Bosnian Croats).

31. The Special Rapporteur has been pleased to note that the Real Property Commission envisioned in annex 7 of the Dayton Agreement has begun operations. The Commission faces an especially complicated task, but its work will be critical to the successful return of refugees and displaced persons to their homes in Bosnia and Herzegovina.

E. Detention issues

32. The Special Rapporteur continues to be greatly concerned about the question of detention in Bosnia and Herzegovina, following the receipt of information indicating numerous instances of arbitrary and, in some cases, secret detention. On her mission in November 1996 she had the opportunity to inspect prisons and meet with prisoners both in the Federation and the Republika Srpska and gathered information concerning violations of due process, the right of access to counsel and other provisions of international law.

33. In Livno, in Federation territory controlled by Bosnian Croat authorities, two men who had been missing for nearly six months were found at the end of 1996 to have been held in secret detention. The men told soldiers of the international Implementation Force (IFOR) that they had escaped from a Livno police station after spending nearly six months in detention in Mostar and Livno following their arrest in Medjugorje on 20 June 1996. During that period international monitors who had made inquiries and visited detention sites in an effort to locate the men were told repeatedly by Bosnian Croat authorities that their whereabouts were unknown.

34. In another case of secret detention, two Bosnian Serbs were reported as missing from along the Trnovo road on 2 July 1996, and in September 1996 two other Bosnian Serbs were kidnapped from a car on the Trnovo road by a group of armed men in civilian clothes. International observers including officers of the IPTF and human rights officers working for the High Commissioner/Centre for Human Rights made repeated appeals to government authorities inquiring whether the men were in Federation custody, but were told that the Government had no information on their whereabouts. On 16 October 1996 the men turned up at the Sarajevo Central Prison after having apparently been held by Federation

authorities at military facilities. They were released on 31 October 1996 following personal interventions by the High Representative, the IFOR Commander and the Commissioner of the IPTF.

35. In November 1996 the Special Rapporteur visited a prison in Bihac where she met with several prisoners accused of war crimes. Mr. Milorad Marceta, a Bosnian Serb, had been held at the prison since 22 October 1996 when he was arrested in apparent violation of the Rome Agreement of February 1996 by Federation authorities after travelling by UNHCR bus to visit his home near Sanski Most. Mr. Aleksandar Bajric, also arrested in apparent violation of the Rome Agreement, seemed in poor health when visited by the Special Rapporteur. In the Bihac prison the Special Rapporteur also learned of several former Abdic supporters who have been held for extreme lengths of time, in at least one case for a period exceeding two years, without trial. Such lengthy pre-trial detention, which appears to occur with some frequency at locations throughout the country, is of grave concern to the Special Rapporteur. She intends to press strongly for resolution of these human rights violations with local authorities.

36. As of 31 December 1996 the Special Rapporteur was informed that Mr. Zlatko Memovic, whose case she described in her previous report (E/CN.4/1997/9, para. 25), remained in detention without trial in the prison at Bijeljina, Republika Srpska, where he has been incarcerated since February 1994. Information received by the Special Rapporteur indicates that Mr. Memovic, like some prisoners at other locations in the country, is being held for the sole purpose of using him in a future prisoner exchange. Two other prisoners, however, also mentioned in the Special Rapporteur's previous report, were reportedly released from Bijeljina prison on 29 December 1996, after being held for nearly a year on the questionable basis of having unlawfully entered the Republika Srpska in February 1996.

F. Freedom of expression

37. The Special Rapporteur is deeply concerned by continuing restrictions on media freedom in Bosnia and Herzegovina, which obstruct one of the main avenues available for bringing the country closer together. Serious problems persist in the Republika Srpska, where opposition media reportedly face various forms of harassment, including frequent police visits in the Bijeljina region. The Media Experts Commission of the Organization for Security and Cooperation in Europe (OSCE) launched an investigation of the Banja Luka publishing firm Glas Srpski, which had been accused of blocking access by opposition press to printing facilities.

38. In an effort to break down the wall of silence separating the two entities, the Special Rapporteur organized and chaired a round-table discussion with journalists from both sides in Banja Luka on 23 November 1996. Journalists from the Federation, most of whom had not visited Banja Luka since the beginning of the war, attended the event with the assistance of the OSCE and field officers of the High Commissioner/Centre for Human Rights, and the assembled group of some 30 professionals overcame initial tensions to have a productive discussion of ways to improve the climate for free expression throughout the country. The participants concluded that a high priority must

be given to making publications and broadcasts from each side available to the general population across the IEBL. Direct lines of communication including improved telephone service were also stressed as an important goal.

39. There have been other positive developments concerning independent media. On 10 December 1996 the inaugural meeting of the Association of Republika Srpska Independent Journalists took place in Banja Luka, bringing together more than 50 journalists and opposition politicians to discuss ways to improve freedom of expression and establish links with other media associations in the former Yugoslavia. A project was also launched at the end of the year to publish a new monthly magazine, Nepitani (Those Not Asked), featuring the work of Bosnian youth from both sides of the IEBL. Young people who have worked on "underground" magazines in Sarajevo, Tuzla, Banja Luka and both sides of Mostar are participating in the new venture.

G. Impunity

40. The Special Rapporteur has been particularly disturbed by the near-total lack of progress in 1996 in the apprehension of persons indicted by the International Criminal Tribunal for grave violations of humanitarian law committed during the war in Bosnia and Herzegovina. Seventy-four suspects have been indicted by the Tribunal, many of whom are believed to be in Bosnia and Herzegovina. Indeed, numerous reports have been received of indicted persons moving about the country openly with no apparent fear of arrest. Mr. Radovan Karadzic, the former leader of a Bosnian Serb political party who has been indicted for criminal responsibility in the siege of Sarajevo and the massacre of as many as 8,000 persons at Srebrenica in July 1995, is frequently seen travelling near his residence in Pale but thus far has not been arrested.

41. In November 1996 the Special Rapporteur met with the new police chief in Prijedor, Republika Srpska. He confirmed that four individuals under indictment by the International Criminal Tribunal had until recently held positions with the Prijedor police force. In Banja Luka, the Special Rapporteur was informed again of the position of Republika Srpska authorities, which she considers unacceptable, that the Republika Srpska Constitution prohibits its authorities from handing suspects in areas under its control over for trial by the Tribunal. On a more positive note, the Special Rapporteur was satisfied that one indicted suspect, Gen. Ratko Mladic, was removed from his post at the head of the Republika Srpska armed forces.

H. National institutions and non-governmental organizations

42. Although the current situation of human rights in Bosnia and Herzegovina remains disturbing, the Special Rapporteur has been encouraged by progress made both in the establishment of national and regional institutions for human rights protection, and in initiatives of non-governmental organizations (NGOs) for the advancement of human rights.

43. The dedication and accomplishments of the Office of the Federation Ombudsmen continue to be a source of inspiration, and the Special Rapporteur has been pleased to note that the Federation Ombudsmen's conclusions appear to be receiving somewhat greater attention from relevant governmental authorities. Certain problems remain, however, for example in Bugojno, where

the Special Rapporteur was dismayed by the lack of cooperation shown by local officials, including the mayor, with the Federation Ombudsmen during an investigative mission there in November 1996.

44. On the national level, growing importance has been achieved by the Dayton-created Commission on Human Rights, composed of the Human Rights Ombudsperson and the Human Rights Chamber. The Office of the Human Rights Ombudsperson seems likely to have important influence under the leadership of Ms. Gret Haller. The Special Rapporteur drew particular encouragement from a strong decision issued by the Ombudsperson in December 1996 concerning Brcko, which found that the local hospital's refusal to receive patients from the Federation violated the Dayton Agreement and the International Covenant on Economic, Social and Cultural Rights.

45. As noted above, the Real Property Commission has also commenced its difficult but vital task of ensuring that property questions are resolved in a lawful manner. More concern is warranted, however, by the poor functioning of the country's court system which, as noted above, has failed to take measures to expedite trials, leaving many accused persons in pre-trial detention for unacceptably long periods.

46. A crucial role in the improvement of the human rights situation will be taken by effective functioning of local law enforcement. The IPTF has managed to organize a vetting process within the police in the Federation of Bosnia and Herzegovina. Unfortunately, authorities of the Republika Srpska have not cooperated in initiating a similar process for that entity's police force.

47. Civil society in Bosnia and Herzegovina has benefited greatly in recent months by initiatives undertaken by NGOs committed to bringing the country closer together. The Special Rapporteur was greatly encouraged by the positive spirit of participants at the Inaugural Conference of the University of Sarajevo Human Rights Centre in December. The Bosnian Helsinki Committee for Human Rights is continuing its constructive work and recently published a handbook on legal standards for fair trials.

I. "Silent emergencies" and the question of missing persons

48. The Special Rapporteur continues to pay attention to a problem which she calls "silent emergencies": suffering due to a variety of causes, not always directly war related, endured by persons without a strong voice in the channels of public discourse.

49. Among those suffering from "silent emergencies" are the relatives of missing persons anxiously awaiting information about the fate of their loved ones. It will be recalled that the Special Rapporteur initiated a project in early 1996, co-financed by the Governments of Finland and the Netherlands, to recover bodies of a limited number of victims of events occurring at Srebrenica in July 1995 and to offer support to local experts in their efforts to identify the dead. The Special Rapporteur attaches great importance to the identification of these victims, as a way to ease the suffering of their relatives. It is expected that answers will be available to be shared with families and local authorities by early 1997.

50. Also concerning missing persons, the Special Rapporteur in November 1996 visited a warehouse near Banja Luka where some 40 sets of remains of Serb victims of the war await identification. Although local medical professionals working on these cases deserve great credit, their efforts suffer from a serious lack of resources. The bodies in the Banja Luka warehouse lie virtually unattended, in a building with open windows and unlocked doors and children playing just outside. The Special Rapporteur would like to emphasize strongly that medical authorities in the Republika Srpska should receive the adequate expert support they require to conduct the difficult work of identifying the dead.

J. Conclusions and recommendations

51. Human rights continue to be violated frequently and systematically throughout Bosnia and Herzegovina. Although the fighting has stopped and some progress has been made towards restoring civil society, Bosnia and Herzegovina remains a deeply divided country with great hostility among its people. The Special Rapporteur believes that the parties must expressly re-commit themselves in 1997 to the genuine promotion and protection of human rights if the peace achieved through the Dayton process is to last. Though great efforts have been made by many international agencies, they will have to act with yet greater resolve on human rights questions in the coming year or risk losing the gains made so far.

52. Freedom of movement, one of the clearest signs of a society at peace with itself, must be vastly improved in the months to come. The country's authorities must issue unambiguous instructions to local police to cease harassment and intimidation of travellers, who under no circumstance should be detained except in conformity with the strictest guidelines. The so-called "rules of the road" agreed to by the parties at Rome in February 1996 must be scrupulously observed, with persons subject to arrest for war crimes only on the approval of the International Criminal Tribunal. The Special Rapporteur continues to advocate the immediate introduction of uniform vehicle license plates throughout the country, to lessen the likelihood of interference with free movement.

53. If Bosnia and Herzegovina is to maintain its unique national identity, citizens must be allowed to settle anywhere in the country they wish, in accordance with the law. The Special Rapporteur is aware of the great difficulties presented by the return process, and she is sympathetic to the views of international humanitarian agencies that progress can be more easily achieved in return of persons to so-called "majority areas". Nevertheless, it would be conceding a terrible defeat to give up on the hope that members of local minorities can return to their homes of origin. This would even be, in a way, allowing a state of war to continue in the territory. The Special Rapporteur believes that all efforts for safe resettlement in minority areas must be vigorously pursued, recognizing that progress will only come in small steps. The initiative by citizens to create the multi-ethnic "Coalition for Return" has been a very encouraging development in this process.

54. While priority is given to the return of displaced persons still in the country, countries of refuge should refrain from deporting Bosnians currently on their territory, at least through the first six months of 1997. It is

still too early to say whether the peace brought about by Dayton will hold, or whether national mechanisms will begin to respond meaningfully to threats against personal security.

55. To support the process of returns, the Real Property Commission created by the Dayton Agreement must be provided with all resources necessary to handle its difficult assignment. Laws on the allocation of abandoned property which are inconsistent with the Dayton Agreement and international law must immediately be repealed.

56. Greater attention should be paid to the proper functioning of the court system in Bosnia and Herzegovina. The present situation, in which some persons are subject to pre-trial detention lasting up to two years or more while others are held in virtual secret detention, is unacceptable.

57. Concerning local police, the Special Rapporteur was gratified by the decision of the Security Council, in resolution 1088 (1996), to expand the authority of the International Police Task Force, allowing it to investigate human rights violations committed by local police. The role of the IPTF will be critical to restoring the rule of law in Bosnia and Herzegovina. The initiative of the High Commissioner for Human Rights to provide human rights training to the IPTF in 1996 should be continued in the coming year, when many new IPTF officers will arrive in the field.

58. The new international Stabilization Force (SFOR) should take stronger action in helping to ensure respect for basic human rights in Bosnia and Herzegovina. It should continue its close cooperation with IPTF, UNHCR and other international agencies, and should in particular take a more active role in providing security to returnees who have followed established return procedures to the Zone of Separation.

59. The apprehension of indicted war-crime suspects should receive the highest priority. Too many words have been spoken on this subject in the past year without simultaneous action. The time has come for those alleged responsible, who continue to move freely throughout the country, to face justice. As long as local authorities refuse to cooperate, the international community cannot escape its responsibility to create an effective mechanism truly designed to bring indicted suspects into custody, and to seek them out if necessary.

60. The Special Rapporteur continues to view the role of the media as central to re-unifying Bosnian society. Following conclusions reached at the journalists' round-table which she chaired in Banja Luka in November 1996, she strongly recommends that the simple steps be taken of making publications and broadcasts from both sides easily available in each entity, and improving telephone communications between the entities.

61. Great encouragement for the future can be drawn from the constructive work of the Office of the Federation Ombudsmen and the Dayton-created Commission on Human Rights. These institutions must receive strong political and financial support from national authorities and the international community. The Special Rapporteur strongly recommends that the authorities of the Republika Srpska establish an Ombudsman institution in that entity.

62. Great encouragement may also be found in the imaginative and courageous initiatives of non-governmental organizations, which are starting to have a real impact on Bosnian society.

63. Children are the hope of the future, in Bosnia and Herzegovina and throughout the former Yugoslavia. They should benefit from comprehensive programmes of human rights education in the schools. Efforts should also be pursued to develop educational exchange programmes, cultural activities and even sports events, such as football matches (with mixed-nationality teams), which bring children and youth together. If adults take steps to bring children together, we may be sure the children will handle on their own the more natural assignment of becoming friends.

II. REPUBLIC OF CROATIA

64. Following the issuance of her last comprehensive report (E/CN.4/1997/9), the Special Rapporteur visited the Republic of Croatia on 20 and 21 November 1996 and had meetings with government officials, including the Deputy Prime Minister and the Minister of Justice, as well as with members of international and local organizations in Croatia. She also met for the first time with the newly appointed Ombudsman. The Special Rapporteur wishes again to express her appreciation for the continuing cooperation she has received from the Croatian Government in the implementation of her mandate.

65. The present discussion considers developments generally from 1 October 1996 to early 1997. It is based on information gathered by the Special Rapporteur and the Zagreb office of the United Nations High Commissioner/Centre for Human Rights, as well as on information provided by the Government of Croatia, including that contained in an aide-Mémoire dated 19 December 1996 addressed to the Special Rapporteur.

A. Personal security in the former Sectors

66. Although violations of personal security in the former Sectors appear to have continued to decline slightly, a sufficient number of recent reports of looting, arson and other incidents warrant the Special Rapporteur's ongoing concern. For example, the house and barn of a 71-year-old Serb man were set on fire in the village of Donja Bacuga (former Sector North) on 29 October 1996, and a house belonging to an exiled Croatian Serb couple who had just received permission to return to Croatia from the Federal Republic of Yugoslavia was blown up by unknown persons on 31 December 1996, in the village of Kovacic (former Sector South). On 11 January 1997 a Serb man was severely injured when a bomb exploded in his house in the village of Josani, near Udbina in former Sector South. Several reports were received in late 1996 of incidents of looting and other intimidation directed against Croatian Serbs.

67. Although the Government appears to have strengthened the police presence in the former Sectors, it is significant that little information has been provided concerning arrests or prosecutions related to incidents in which Croatian Serbs were victims. In one case involving the theft of livestock near Knin in October 1996, it was reported that police convinced the perpetrators to return the stolen animals. No progress has been reported on

investigations of grave violations of humanitarian law committed in the former Sectors following Croatia's recovery of control over the region in August 1995.

68. Concerning an assault in October 1996 against two persons in an office of the human rights NGO Homo in Vrhovine (former Sector North), described by the Special Rapporteur in her previous report (E/CN.4/1996/9, para. 41), the Special Rapporteur is unaware of any proceedings initiated against the man responsible nor has she received information about the police investigation. On 22 November 1996 the same office was again attacked by unknown persons who broke in and set it on fire, causing considerable alarm in the NGO community. Another attack against a human rights NGO active in the former Sectors occurred on 9 December 1996 in Split, when a foreign national working with Otvorene Oci (Open Eyes) was severely beaten and injured by a neighbour who accused her of "spying against Croatia". Despite a police investigation, the assailant has so far not been arrested.

B. Humanitarian and social issues

69. As mentioned in her last report, the Special Rapporteur welcomes measures which have been taken by the Croatian Government, in cooperation with relief agencies, to alleviate humanitarian suffering in the former Sectors. The Government's humanitarian programme "Let's Save Lives" is ongoing and is expected to be broadened this winter in certain important areas. For example, the Government has entered into a joint project with the International Federation of Red Cross and Red Crescent Societies to rebuild health-care facilities which will be able to care for some 700 persons, and it is working with Equilibre to provide social documentation to elderly Croatian Serbs who remained in former Sector North. In connection with her special concern for children, the Special Rapporteur has been pleased to learn that UNICEF, in cooperation with relevant government ministries, is preparing a plan of action to be implemented in 1997 for children in the areas of Knin, Obrovac, Benkovac and Drnis. The programme is envisioned to help local authorities improve medical care, educational facilities and other services for children living in difficult conditions.

70. The Government has further indicated that it is responding to the local population's social welfare needs by setting up branch offices of the National Pension and Disability Insurance Fund and the Croatian Labour Office (for unemployment benefits) at locations throughout the former Sectors.

71. The Special Rapporteur remains concerned, however, about reported discrepancies in reconstruction assistance provided to Croat and Croatian Serb communities. Reliable reports continue to indicate that public services including electricity and water supplies are being denied to certain Croatian Serb villages, such as Knezevici and Zecevo in the former Sector South and Cremusnica in former Sector North. Towns being resettled by Croat refugees and displaced persons, meanwhile, are benefiting from the investment of substantial resources.

C. The return of Croatian Serb refugees

72. Since her last report the Special Rapporteur has not noted any significant improvement concerning the return to the country of Croatian Serb refugees. This is the case despite optimism that progress on this issue would follow the signing in August 1996 of the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia.

73. According to the Croatian authorities, "the estimated number of returnees of Serb origin to Croatia ... amounts to up to 13,000 out of which 9,253 have the requisite authorization of the competent government bodies." The Government further noted that the return of approximately 100 families of Serb origin to Western Slavonia was expected to be completed by the end of 1996. However, information from numerous observers in the former Sectors strongly suggests that the number of returnees to the former Sectors themselves is in fact far smaller than that indicated by official data. It would appear that Croatian Serb refugees, to the extent they are returning at all, are relocating to urban centres such as Zagreb and Split rather than to the former Sectors. It may be noted that a group of Croatian Serbs who attempted to visit the area of Glina, former Sector North, in early October 1996 in a trip arranged by United Nations agencies was prevented from entering the town by a violent demonstration led by the Mayor of Glina himself.

74. The Special Rapporteur acknowledges that the Government of Croatia has an urgent humanitarian responsibility to provide care and support to more than 350,000 refugees and displaced persons, mostly of Croat national origin, currently residing on its territory. At least 55,000 of these persons have now been resettled in the former Sectors. While the rights of these persons to shelter and a decent future may not be denied, the Special Rapporteur is concerned that their relocation to the former Sectors, without a balanced simultaneous return of Croatian Serbs, will profoundly change the region's ethnic profile and make it increasingly difficult for exiled Serbs ever to return. The Special Rapporteur notes, for example, that only some 50 Serbs are estimated to have returned to the town of Gracac, which used to be one of the largest communities - predominantly populated by Serbs - in the area of the former Sector South. Meanwhile, in nearby Kistanje, also once a Serb-majority town, there are now virtually no Serb residents but several hundred Croats who are refugees from Kosovo in the Federal Republic of Yugoslavia.

75. The failure to resolve the fundamental issue of property remains one of the major obstacles to the return of Croatian Serbs. Although property commissions have been established at the local and municipal levels, practice reveals that they have been unable or unwilling to take meaningful action in response to requests submitted for the return of property. For example, one Croatian Serb couple who returned to the country in December 1996 attempted to reclaim their home in Hrvatska Kostajnica, which had been given over to a Croatian policeman. Although the occupant indicated he was willing to vacate the premises, the local housing commission advised the couple that the property would be made available instead to a Croat refugee.

76. The Special Rapporteur is not aware of any major steps which have been taken to resolve the property dilemma despite hopes for its gradual resolution sparked by the Normalization Agreement of August 1996. She was informed in a recent meeting with Croatian authorities that difficulties exist mainly due to a lack of financial resources to rebuild destroyed houses or relocate those who have been temporarily accommodated. The Special Rapporteur has made available to the Croatian Ombudsman numerous cases concerning alleged violations of property rights and is awaiting his office's response.

D. The right to a nationality

77. The Special Rapporteur in previous reports has expressed her concern with regard to discriminatory measures evidently applied in the acquisition of Croatian citizenship (see, e.g. E/CN.4/1997/8, paras. 118-122). She has called attention especially to arbitrary interpretation of article 8 of the Law on Citizenship, conditioning citizenship on a conclusion that an applicant is "attached to the legal system and customs persisting in the Republic of Croatia and that he or she accepts the Croatian culture". As indicated by cases recently brought to the attention of the Zagreb office of the High Commissioner/Centre for Human Rights, this provision has been used to deny citizenship to Croatian Serbs who have been long-time residents in Croatia. Additional information recently received, which the Special Rapporteur will endeavour to confirm, suggests that higher fees are charged to non-Croat citizenship applicants than to Croats.

E. The question of amnesty

78. The Special Rapporteur has previously noted her view that the adoption of the Amnesty Law on 25 September 1996 was a positive step for both the return of Croatian Serb refugees and the peaceful reintegration of the Eastern Slavonia region into the rest of Croatia. However, the Law's implementation, and specifically the re-arrests of numerous persons following its adoption, have cast doubt on its effectiveness for these purposes.

79. In a letter on 15 November 1996 to the Croatian Deputy Prime Minister, the Special Rapporteur requested information concerning persons reportedly re-arrested only days after their release under the Amnesty Law, for example in the towns of Lepoglava, Sisak, Karlovac, Zadar, Split and Bjelovar. She also expressed concern about the situation of persons who, having left Croatia during the conflict, may have been tried in absentia and are unaware of the current status of proceedings against them.

80. In a meeting with the Croatian Minister of Justice on 21 November 1996 the Special Rapporteur was informed that there had been difficulties in implementation of the Amnesty Law because several courts received different proceedings against the same accused persons. The Minister informed the Special Rapporteur that the law resulted in the release of 96 persons, but that some 27 had evidently been re-arrested, accused of war crimes or criminal offences not covered by the Amnesty Law. Concerning persons tried in absentia, he pointed out that the Croatian criminal law prescribes the proper procedure and said that a list of 811 persons published some months ago contained the names of persons not covered by the Amnesty Law. The Special Rapporteur has expressed concern, however, about the ambiguities of this list.

81. The Zagreb office of the High Commissioner/Centre for Human Rights initiated coordination meetings between international and local NGOs on the amnesty question and cases of re-arrests. While data have been assembled concerning cases of re-arrests, the Special Rapporteur intends to seek further clarification on this matter from the Croatian authorities.

F. Freedom of expression

82. In her last report, the Special Rapporteur expressed concern about freedom of the media and abuse of this freedom in Croatia. The media question was dominated in late 1996 by the controversy surrounding Radio 101, one of the oldest independent radio stations in the country, which frequently carries programming critical of the Government. On 18 November 1996 the State Telecommunications Council decided to terminate Radio 101's access to its long-time broadcasting frequency and assigned it instead to a start-up station called Radio Globus 101. The move caused great indignation in Croatian society and resulted in the largest street demonstration the country had seen since independence in 1991, organized by the Croatian Helsinki Committee in Zagreb on 20 November 1996 and numbering some 100,000 persons.

83. In a meeting with Croatian government officials in Zagreb the next day, the Special Rapporteur expressed her deep concern at the decision affecting Radio 101, calling it unnecessary and unwise. The same day, Radio Globus 101 withdrew its application for the frequency and Radio 101 was provisionally reinstated, following a government statement that the withdrawal of Radio Globus 101 established the prerequisites for a new call for applications to the contested frequency. Radio 101's status remains uncertain and is due to come up for review again in February 1997.

84. In an aide-mémoire to the Special Rapporteur, the Government stated that the Telecommunications Council is "an independent body elected by and responsible solely to the Parliament". The Special Rapporteur notes, however, that its members are proposed to the Parliament by the Government. The Government has further stated that the Council's decision "should not be interpreted as an attempt to limit freedom of expression in Croatia, which is widely enjoyed by numerous media enterprises currently operating in the Republic of Croatia". In this view, the Government continued, "it should be noted that, to date, 133 concessions for radio broadcasting and 14 concessions for television were granted to media enterprises in Croatia". In a letter to the Special Rapporteur, Deputy Prime Minister Mintas Hodak further stated that "the decision of the Telecommunications Council, the action of the Croatian Government and the peaceful assembly of the citizens of Zagreb supporting the continuance of the broadcasting by 'Radio 101' ... all reflect the plurality of equally legitimate political interests in the Republic of Croatia".

85. In her last report, the Special Rapporteur noted favourably the judicial decision of 25 September 1996 in the Feral Tribune case, by which the editor-in-chief and a reporter of the well-known satirical newspaper were acquitted by the Zagreb Municipal Court of charges of slandering the President of the Republic. It now appears that the case is not yet closed, since the State Prosecutor has indicated that a new complaint might be pursued on the basis of articles 71, 72 and 77 of the Criminal Code, authorizing prosecution for affront or slander against any of five high State officials, including the

President. A similar complaint is now under investigation by the State Prosecutor against the magazine Arkzin for an article on financial activities of the President and his family.

86. Controversy over the media in Croatia is taking place in an environment which has become notably more hostile to free expression in recent months. In a speech to an assembly of the ruling Croatian Democratic Union (HDZ) party on 7 December 1996, the President of the Republic severely criticized sectors of society, including independent journalists, intellectuals and local and international human rights NGOs, saying that they sought to destabilize the country using various methods, including calls to disorder, social conflict and strikes. The President characterized the subjects of his discourse as opponents of independent Croatia and said they sought to take control over the influential fields of media and culture.

87. Within days of the President's remarks, which were broadcast on State-controlled television, two officials of the Croatian branch of the NGO Open Society Institute were arrested and held for investigation of financial misdeeds. The Institute, which is funded by the United States-based Soros Foundation, has been active in supporting opposition media in Croatia. The speech was also followed by an attack on a human rights activist, described above in section A, in the city of Split. The Croatian Helsinki Committee has been targeted by an ongoing campaign of hate speech in Government-controlled media.

G. The judiciary

88. The Special Rapporteur is concerned about questions which have been raised about the independence of the judiciary in Croatia. Although Croatian law normally provides for lifetime judgeships, many long-time judges have been relieved of their posts in 1996 in decisions which have been criticized as motivated more by judges' national backgrounds and political views than their professional qualifications. Thus, in Karlovac municipality six Croatian Serb judges were dismissed during the year, leaving only one Serb judge in that community. In Split the process of judicial appointment resulted in the dismissal of several experienced jurists, including two women who between them had nearly 50 years of experience as judges, and the appointment of several new judges with close ties to the ruling HDZ party. Although the Special Rapporteur recognizes the authority of the State Judicial Council to appoint judges, she believes that the integrity of the courts demands that greater weight be placed on professional competence than on political sympathies.

89. The Special Rapporteur is especially concerned about a possible threat to judicial independence posed by the suspension of the President of the Supreme Court, Dr. Krunislav Olujic, by the State Judicial Council on 26 November 1996. Disciplinary proceedings were instituted against the judge for alleged "moral failures", based on evidence obtained through surveillance of his telephone conversations. The judge has denied conduct incompatible with his professional responsibilities and appealed against his dismissal, describing it as politically motivated and illegal. A former member of the ruling HDZ party, the judge had earlier announced that he was leaving the party since such affiliation was incompatible with his judicial post, and he has publicly expressed disagreement with leading party activists.

90. On 6 December 1996 disciplinary proceedings in the case were postponed following the judge's request that three members of the reviewing panel be excluded because of alleged bias. The Special Rapporteur will follow further developments in the case.

H. Illegal and forcible evictions

91. Although the Special Rapporteur has received no reports of illegal and forcible evictions in areas of Croatia outside of the former Sectors in recent months (see E/CN.4/1996/9, paras. 58-59), she remains concerned about the resolution of past cases of unlawful eviction. According to information received from Croatian NGOs, numerous court decisions favouring evicted persons have not been implemented, leaving hundreds of families, mainly Serbs, unable to move back into their homes.

92. The Special Rapporteur remains concerned over allegations of abusive interpretation of article 102.a of the Law on Housing, which provides that a person can be deprived of his property "if he participated in enemy activity against the Republic of Croatia". This provision has been used in some cases against non-Croats, solely on the basis of their prior service in the disbanded Yugoslav National Army (JNA).

I. Measures for the protection of human rights

93. On 6 November 1996 Croatia was formally admitted as the fortieth member of the Council of Europe. The Government signed the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, thereby accepting the competence of the European Commission and European Court of Human Rights. Croatia also signed the Framework Convention for the Protection of National Minorities and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. With a view to better implementing its commitments to the Council of Europe, the Government advised in September 1996 that it had established a formal working group of both Government representatives and independent experts to examine the compatibility of Croatian law with the European Convention on Human Rights and its Protocols.

94. During her mission in November 1996, the Special Rapporteur met with the newly appointed Ombudsman, Mr. Ante Klaric, and provided him with information on several cases of alleged human rights abuses in the former Sectors. The Ombudsman expressed his willingness to cooperate with her as well as with local NGOs. While the Special Rapporteur was pleased with the meeting, she was concerned that it was attended by a representative from the Croatian Foreign Ministry. The Special Rapporteur places great emphasis on the role of the Ombudsman, especially on the Office's independence from the Government.

J. Conclusions and recommendations

95. The human rights situation of the Croatian Serb population remains a serious cause for concern. Numerous cases of looting, violent harassment and discriminatory treatment continue to be reported in the former Sectors, and there is little evidence of investigation and redress of past abuses. Property issues and the restoration of access to public services are not being

addressed in an equitable manner. The Special Rapporteur is disturbed by what appears to be a lack of real willingness by the Government to protect the welfare and guarantee the security of Croatian Serbs.

96. The adoption of good legislation for the protection of human rights and fundamental freedoms must be followed up with concrete action. The Special Rapporteur has been encouraged by her preliminary contacts with the new Croatian Ombudsman, but she emphasizes that the independence of that Office must be rigorously maintained.

97. While the resettlement of Croatian refugees and displaced persons has advanced, the Special Rapporteur believes that additional progress must be made in the return of Croatian Serb refugees now in the Federal Republic of Yugoslavia and Bosnia and Herzegovina.

98. The Special Rapporteur's satisfaction with the recent passage of comprehensive amnesty legislation in Croatia has been mitigated by reports that some beneficiaries have been rearrested on charges similar to the ones for which they were originally held, or on charges not previously made. The negative effect of these actions on the confidence of the Serb population in particular was predictable. The Special Rapporteur will follow future developments and urges the Government to make further action on prosecutions both transparent and faithful to proper criminal procedure. Citizens should not have to live in doubt as to whether they might be arrested or rearrested at any time.

99. While the Special Rapporteur acknowledges the relative availability of independent media voices in Croatia, she is concerned about recent decisions and public statements of government officials which indicate an underlying hostility to alternative points of view. She underlines the importance of full freedom of expression to a truly democratic society.

100. The Special Rapporteur has been informed of recent measures indicating a possible weakening of judicial independence in Croatia. She urges the Government to refrain from retribution against competent judges solely on the basis of their political opinion or national background. She also recommends the strengthening of the judiciary through training programmes for new judges and continuing judicial education for experienced judges.

101. The Special Rapporteur would like to emphasize her concern for the needs of the most vulnerable populations - children and women - of Croat and Croatian Serb background alike. She welcomes all efforts undertaken to ensure full attention to their problems. As in the other countries covered by her mandate, she believes that future perspectives for children may be improved through programmes for human rights education.

III. THE REGION OF EASTERN SLAVONIA, BARANJA AND WESTERN SIRMIUM (CROATIA)

102. On 15 November 1996 the United Nations Security Council adopted resolution 1079 (1996), extending the mandate of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) until 15 July 1997. The Council further requested that promptly

after elections, and in no case later than 1 July 1997, the Secretary-General provide to the Council his recommendations for a further United Nations presence, and possibly a restructured UNTAES, for a further six-month period. The adoption of resolution 1079 (1996) had an immediate impact on the holding of local elections which, according to the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (12 November 1995, hereafter "Basic Agreement"), are to be held not later than 30 days before the end of the transitional period, and which thus would have been held in December 1996. The resolution further provided extra time to organize the return of displaced persons to their respective places of origin.

103. Despite the new flexibility provided by resolution 1079 (1996), the complexity of the situation in the region of Eastern Slavonia, Baranja and Western Sirmium (hereafter, "the Region") means that every effort will have to be maximized in the coming months if its peaceful reintegration into Croatia is to succeed. The following discussion, based on information gathered by the Special Rapporteur and the field office of the High Commissioner/Centre for Human Rights in Vukovar, considers some of the most pressing issues presently affecting the Region, which remains highly volatile.

A. Personal security

104. The Special Rapporteur is pleased to record that the Region remains generally free of violent episodes, with criminal activities mostly limited to attacks against private property. The so-called "Weapons Buy-Back Programme" launched in October 1996 by UNTAES resulted in the surrender of a large number of weapons and has certainly been a factor contributing to general stability. However, since the last report of the Special Rapporteur some episodes of ethnically motivated violence have taken place, which can perhaps be regarded as unavoidable in the process of the Region's reintegration into the institutional framework of Croatia. Such episodes, while unacceptable, appear to be the work of a minority of extremists not representative of the population at large.

105. In late October and early November 1996 the village of Dalj experienced a series of bomb attacks, mostly against private property belonging either to Croats or to persons who had taken steps to obtain Croatian documents. Visits of Croats into the Region and displaced persons into Croatia proper were at times disrupted by episodes of intolerance. Thus, for example, on 4 December 1996 a group of Croatian journalists attending an exhibition of children's paintings in Vukovar was attacked by a mob composed mostly of local Croatian Serbs. The crowd also attacked local residents who had organized the event as well as representatives of international organizations. On 24 December 1996, Croats attending a religious ceremony in Ilok were assaulted by hundreds of demonstrators who were dispersed only by the intervention of United Nations peace-keeping troops. The incident resulted in the dismissal of three members of the Transitional Police Force (TPF), the mixed police force in the Region which has demonstrated an inability or unwillingness to conduct effective crowd control.

106. Communities in Croatia proper have also proved capable of violence, as on 7 December 1996 when a group of Croatian Serb displaced persons from the

Region who had gone to visit the village of Petrinja, in former Sector North, was assaulted by an angry mob unrestrained by Croatian police officers present at the scene.

107. Despite such incidents, it should be emphasized that the last months of 1996 also witnessed many successful visits across the Zone of Separation, notably on the occasion of All Saints Day, 1 November 1996, when several hundred Croat displaced persons from outside the area visited cemeteries in the Region without incident.

B. The process of reintegration

108. On the occasion of the meeting of the Humanitarian Issues Working Group at Geneva on 16 December 1996, Mr. Jacques Klein, the United Nations Transitional Administrator, observed that "no one likes living in someone else's home, nor can we have real peace in Eastern Slavonia until a good number of Croatian Serbs from the Krajina and Western Slavonia are allowed to return to their original homes. [W]hat they have created in Eastern Slavonia is a Kosovo of Serbs. This is neither in Croatia's nor the international community's best interest. Unless real return of a sizable number of Croatian Serbs [to their homes elsewhere in Croatia] is made possible, grave problems will be encountered in attempting to bring back displaced Croats to the region".

109. UNTAES, in cooperation with the Croatian Government and local Serb authorities, has initiated a series of programmes to speed up the process of reintegration, which have met with moderate success. The Saturday open markets, accessible to residents both of the Region and of Croatia proper, in the Zone of Separation have been a notable success story, despite attempted boycotts by Croatian authorities. Tens of thousands of people from both sides have been able to meet on neutral ground after years of separation. More recently UNTAES started the so-called Sponsorship Programme by which residents of Croatia proper have been able to visit the Region on the invitation of a sponsor, who can be a relative or a friend. The programme's success again highlighted the will of people to overcome barriers and return to normality.

110. On 1 November 1996 the so-called Sirmium Triangle, a group of five villages (Donje Novo Selo, Nijemci, Podgradje, Apševci and Lipovac), w[illegible] opened by UNTAES for free and unlimited access by all Croatian citizens (except police) to facilitate reconstruction and the return of Croatian displaced persons by spring 1997. At the programme's commencement the combined population of the villages was fewer than 100 people, mostly Croatian Serbs displaced from Western Slavonia, although the villages' population before the war was over 5,000. Initially it was hoped that while reconstruction work was in progress the Croatian Serb residents would be able either to return to their places of origin, or at least to lodge requests for compensation for lost property with the Croatian Government. However, a lack of cooperation from Croatian officials coupled with incidents of harassment by Croat visitors and even Croatian police who visited the area without authorization led to most Serb families fleeing from the area. Remaining Serb displaced persons, meanwhile, reportedly have had difficulties in obtaining Croatian identity documents.

111. It is the hope of the Special Rapporteur that, based on this experience, steps will be taken to prevent a similar exodus of Croatian Serb displaced persons and other residents from three villages in the north-west corner of Baranja (the so-called "Torjanci Triangle") which is planned to be the next area opened for access to Croatians from the other side of the line.

C. Arrests and the question of amnesty

112. The implementation in October 1996 of Croatia's Amnesty Law (see section II.E above) has had immediate repercussions on the process of reintegration. People now living in the Region have expressed considerable anxiety as to whether they will face arrest after the return to Croatian rule. Regrettably, indications so far have not been encouraging. In June 1996, the Croatian Government published what was described as a non-exhaustive list of 811 names of alleged war criminals, which caused considerable distress in the Region due to its lack of precision and raised fears that virtually anybody was subject to prosecution. The list was raised again in a meeting in November 1996 between the Special Rapporteur and the Croatian Minister of Justice, causing the Special Rapporteur great concern.

113. With direct reference to the Region, several cases have been reported of persons who, despite having received clearance from the Croatian authorities, were arrested either in the Zone of Separation or upon their entry into Croatia proper. These persons were given lawful treatment and were released after pressure from international officials, including the United Nations Transitional Administrator. None the less, the incidents sent a negative message to the Region's inhabitants, many of whom see themselves as susceptible to arbitrary treatment by the Croatian authorities and dependent upon international protection.

D. Right to a nationality

114. Several months after the opening of the UNTAES Documentation Centres (UDCs), at which people can apply for Croatian documents, their record remains unsatisfactory. The limited number of such centres may only partly explain the small number of applications received to date. Violent episodes such as bombing attacks, noted earlier, as well as instances of verbal abuse have deterred people from utilizing the UDCs. People have also been held back by long queues and lengthy procedures. Recent reports indicate that people obtaining domovnica (citizenship certificates) in January 1997 were told to come back in July 1997 to apply for identity cards, which would effectively prevent them from participating in elections scheduled for March 1997 for which identity cards will be a prerequisite for voting. A lack of transparency by Croatian authorities has been a serious cause for concern. The complexity of the procedures applied and the Government's frugality in providing information about how applications are handled has led to a number of questions. For example, data provided by the Croatian Government call a high percentage of applications "solved". However, figures released by United Nations officials at the UDC in Vukovar show that from September to December 1996 only 44 per cent of the requested domovnica were issued. A breakdown of the data shows that the percentage was only 42 per cent for Serbs, while for applicants of other ethnic affiliations, mostly Croats, the figure was 89 per cent.

115. For everyone in the Region to be duly registered, an estimated 100,000 citizenship documents will have to be issued before the end of the transition period, which is to say by 15 July 1997. More urgently, however, for eligibility to vote in the upcoming elections residents will have to be issued identity cards by 16 March 1997. This will be a huge task which can be accomplished only with the full cooperation of all parties.

E. Elections

116. According to article 12 of the Basic Agreement, the Transitional Administration is charged with the duty to organize "elections for all local government bodies, including for municipalities, districts and counties ... not later than 30 days before the end of transitional period". Following the adoption of Security Council resolution 1079 (1996), the latest date on which elections may be held is 15 June 1997. Recognizing the importance of monitoring the activities of newly elected local government bodies, it has been decided to schedule the elections several months earlier, on 16 March 1997, coinciding with local government elections in the rest of Croatia.

117. The organization of free and fair elections will require an enormous effort by all parties. Key issues will include proper issuance of documents to the Region's dwellers, proper registration of inhabitants on voters' lists (including verification of domicile in the Region), and the organization of voting by 40,000-50,000 Croatian persons displaced from the Region who now live in over 500 different locations in Croatia. Much will also depend on effective distribution of information and voter education. It will be essential to allow all participants access to political campaigning, despite the difficulties imposed both by the economic situation and by the existence of a zone of separation between the Region and Croatia proper. Following the elections, monitoring of newly elected local government bodies with Croat and Serb representatives working side by side will be one of the most important tasks of the last months of the mandate of UNTAES.

F. Conclusions and recommendations

118. On 3 December 1996 the President of Croatia visited Vukovar for the first time since 1991, signalling that normalization may indeed be within reach. The past months, however, have given clear indications of the challenges of reintegration. The Special Rapporteur has been especially disturbed by the depth of hatred which she has encountered in her visits to the Region, and by recent violent demonstrations of intolerance. Exemplary leadership on both sides, and genuine efforts to reach out to former adversaries, will be necessary if the Region is to set an example in peaceful reconciliation for the rest of the former Yugoslavia.

119. The Special Rapporteur recognizes that the Region's future remains uncertain, especially for displaced Serbs living there and for those who played any significant role in the breakaway regime of the so-called "Republic of Serb Krajina". Despite the admirable work of UNTAES, and repeated declarations of good will, little concrete action has been taken so far by the Croatian Government to foster a true sense of security in the Region. Recent unauthorized incursions by Croatian police in the south of the Region reflect

a lack of control by the Government over its agents. Cases of re-arrest, despite the Amnesty Law, give further cause for concern. At the same time, within the Region itself Serb extremists keep tensions at a high level.

120. The Government of Croatia has a major responsibility to demonstrate its commitment to the rule of law and the protection of human rights in the Region. Positive steps in this regard may be taken through the establishment of a fair and impartial local judiciary, with proportional participation of Croatian Serb jurists. The Special Rapporteur also places great emphasis on the involvement in the Region of the Croatian Ombudsman, who has indicated his commitment to an active presence.

121. Unfortunately, the possibility of a mass exodus of Croatian Serbs from the Region continues to be a major cause for concern. The conduct of the elections of March 1997, especially the opportunity provided to local Croatian Serbs to participate through the issuance of documents, will be critical, demonstrating whether the Government of Croatia intends to provide residents of the Region with a meaningful voice in their future.

122. The Special Rapporteur acknowledges the "Letter by the Government of the Republic of Croatia on the Completion of Peaceful Reintegration of the Region under the Transitional Administration, Republic of Croatia", issued on 13 January 1997 (just before the present report went to press). The document represents a positive declaration of intent and appears to be a good step towards peaceful reintegration. The Special Rapporteur will offer a more complete indication of her views concerning the terms and implementation of the letter at a later date.

123. With the mandate of UNTAES possibly coming to an end on 15 July 1997, the Special Rapporteur believes that a continued international presence, working together with Croatian authorities and the local population, can play a constructive role in the re-establishment of civil society in the Region. She therefore supports full consideration of proposed initiatives for such a presence advanced by the United Nations High Commissioner for Human Rights, the Organization for Security and Cooperation in Europe, the Council of Europe and other international organizations.

IV. FEDERAL REPUBLIC OF YUGOSLAVIA

124. Human rights concerns in the Federal Republic of Yugoslavia at the end of 1996 were dominated by events surrounding the holding of federal and municipal elections in Serbia. Long-standing concerns about freedom of expression and the virtual lack of independent media, the right to free elections, and the right not to be subjected to arbitrary arrest or to ill-treatment and torture intensified. A high level of violations especially of the right to personal security were reported from Kosovo. The Special Rapporteur would like to emphasize, however, her satisfaction at the cooperation which she and the staff of the Belgrade office of the High Commissioner/Centre for Human Rights have received from the Government of the Federal Republic of Yugoslavia.

A. The right to free elections

125. On 3 November 1996 elections were held to the Federal Parliament. The ruling parties in Serbia (the Socialist Party of Serbia and its coalition partners) and in Montenegro (the Democratic Party of Socialists) gained a broad majority in the Federal Chamber. Whereas these elections were not contested, the second round of municipal elections held in Serbia on 17 November 1996 sparked widespread and persistent protests by thousands of peaceful demonstrators in major cities, including the largest in Belgrade since 1991. Demonstrators voiced discontent with what they and many international observers saw as the Government's blatant manipulation of election results. Specifically, the Government annulled results in Belgrade and 14 other major cities won by the opposition coalition Zajedno (Together).*

126. The Government first acknowledged the opposition's gains, but suddenly reversed its position. Electoral commissions dominated by the ruling party overturned election results on vague grounds, and municipal courts, as well as the Serbian and Federal Supreme Courts, swiftly upheld the annulments. In an unprecedented move, however, five Supreme Court judges disassociated themselves from colleagues who supported these decisions. The dissenters stated that their colleagues had "brought into question the honour and dignity of [the] profession and the reputation of the judiciary in total". According to one Supreme Court judge, the court "unfortunately did not have the strength or the courage to acknowledge what belongs to the electorate on the basis of election results".

127. With legal avenues for redress exhausted, opposition leaders called on demonstrators in the streets to remain peaceful. In the first days of the protests a few demonstrators broke windows of pro-Government media buildings by throwing stones, but the large-scale demonstrations which followed for many weeks remained virtually entirely peaceful. The Government, for its part, gave assurances in the first week of December 1996 that it would refrain from using force against the demonstrators, and the Special Rapporteur notes that the police, with rare exceptions, indeed did so.

128. On 13 December 1996, the Government invited the OSCE to establish the facts about the election results. An OSCE delegation led by Mr. Felipe González visited Belgrade in late December and concluded that the opposition coalition had indeed won the local elections in 14 major towns, including for the Belgrade City Council. The Government's immediate response was to accept a small part of the report's findings, but it failed to acknowledge the opposition's electoral victories in most of the contested major cities, and notably in the Belgrade City Council. By year's end the Government had announced only a partial opposition election victory in

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* As the present report went to press in January 1997, the Special Rapporteur received information that election commissions in Belgrade and Nis had recognized Zajedno's victories in the 17 November elections. The Special Rapporteur will provide her observations concerning these and other more recent developments in a separate communications to the Commission on Human Rights.

Serbia's second largest town, Nis. With many important election results remaining contested, large-scale demonstrations by the opposition and students continued throughout Serbia into the early days of 1997.

B. Freedom of expression and the media

129. The Government-controlled media virtually ignored the massive demonstrations. On 26 November 1996, for example, in their sixth day the demonstrations in Belgrade involved for the first time an estimated 100,000 people. However, State-owned television Radio Television Serbia (RTS), which is for many citizens the only source of news, continued to make no mention of events in the capital. The leading news story that day was President Milosevic's reception of a delegation of Greek youth. The few independent media reporting on the demonstrations came under strong pressure to cease coverage of the events, and in some cases were prevented from doing so altogether. Many people were thus deprived of their right to receive information and ideas from different points of view, as provided for by the International Covenant on Civil and Political Rights.

130. Radio B-92, well known for its long history of independent broadcasting, was first jammed and then, on 3 December 1996, taken off the air altogether. Radio Index suffered the same fate. Widespread national and international protests followed, and broadcasting was allowed to resume two days later. Officially, a claim was made that Radio B-92's disruption had been due to "abundant rainfall in the last two days". However, Radio Boom 93, a local radio station from Pozarevac, which was also suspended the same day, was not allowed to resume broadcasts.

131. Print media also came under strong pressure. According to information received by the Special Rapporteur the independent newspaper Blic, which reported extensively on the demonstrations, was apparently first pressured by a State-run printing firm to cut its press run by 75 per cent. Its editor and several journalists resigned in protest, although they returned a week later after a new printer had been found. Dozens of journalists from the pro-Government paper Politika published a letter saying that their reports of the opposition rallies had been censored and replaced by those of the official news agency Tanjug, which virtually ignored the rallies. Some of these journalists were put on paid leave, while others were re-assigned to the cultural pages.

132. Particularly fierce attacks on the opposition, meanwhile, were broadcast by the State-controlled electronic media. In its prime-time news on 1 December 1996, RTS carried a statement by Mr. Dragan Tomic, the Speaker of the Serbian Parliament and a member of the ruling SPS party. He called the demonstrators "pro-fascists" and compared the demonstrations to tactics which Hitler employed to gain power. Vecernje Novosti, the pro-Government newspaper with the largest circulation, called the actions of the demonstrators "terrorism", though they had been virtually entirely peaceful. Such statements could easily have provoked hatred and fostered hostility against peaceful demonstrators. In a letter to President Milosevic on 6 December 1996 the Special Rapporteur wrote that such statements should not be tolerated, and she urged the Government to ensure that article 50 of the Federal Constitution, prohibiting incitement to hostility or violence, be strictly

enforced. In a statement on 9 December 1996 the Special Rapporteur summarized her concerns as expressed to the President of Serbia and said she was disturbed by the temporary closure of the three radio stations. She stressed that people have a right to receive information and ideas from different points of view and urged the Government to enable all media to operate in genuine conditions of freedom and fairness.

133. During the demonstrations dozens of participants were arrested for their expressive activities in Belgrade. According to the Secretariat for Internal Affairs, 32 demonstrators had been arrested by 2 December 1996, 10 of whom were charged with criminal offences while 22 others faced lesser charges. By mid-December the opposition was reporting that about 100 arrests had been made. Many arrested demonstrators were promptly sentenced to short terms of imprisonment of between seven days and one month. They included persons convicted of petty offences such as throwing eggs or yoghurt at Government and government media buildings, which actions had led to the demonstrations acquiring the name "the yellow revolution".

134. The Special Rapporteur in her letter of 6 December 1996 requested details of these arrests and the grounds on which 32 persons had been convicted. She expressed concern that the defendants included persons who had expressed their views in a peaceful manner. She observed that activities of a symbolic nature, provided they did not result in damage to property, could be a legitimate exercise of the right to freedom of expression. The Special Rapporteur questioned whether the punishment of imprisonment was proportional to the offences allegedly committed. She had not received a response to her letter as of mid-January 1997.

C. Security of the person

135. Allegations of torture and ill-treatment were common throughout the Federal Republic of Yugoslavia during this period. In Belgrade, police brutality became an issue when Mr. Dejan Bulatovic was arrested and beaten by police immediately after carrying an image of President Milosevic in prison uniform during demonstrations on 5 December. He required medical treatment in hospital. Lawyers visiting him in prison six days after his arrest noted visible injuries on his head. He served a 25-day prison sentence, following conviction for a law and order offence which was apparently based entirely on a statement which he contends was extracted from him by force. Notwithstanding provisions in the Code of Criminal Procedure requiring courts not to convict a person solely on the basis of an admission, an appeals court held that his statement alone was sufficient ground for conviction. In a letter to the Serbian Minister of Justice on 13 December 1996, the Special Rapporteur requested a prompt and impartial investigation of the allegation of wrongful conviction, urging that Mr. Bulatovic be released from prison pending the inquiry. She stressed that international human rights standards prohibit statements extracted under torture from being admitted in evidence.

136. None of these proposed steps, however, was taken. On 8 January 1997 the Special Rapporteur received a detailed response from the Minister of Justice, advising her that specialist medical examinations of Mr. Bulatovic carried out during his imprisonment found that his vital organs were functioning normally, but that he had swellings on his head and nose, and a haematoma under his

right eye. Unfortunately, the Government offered no explanation as to how these injuries had been inflicted, nor whether an inquiry into allegations that the police were responsible would be conducted. The Special Rapporteur was informed only that the judge found "no sign that Mr. Bulatovic had given his statement out of fear or under force, nor had there been any motive for self-accusation".

137. The most serious violence during the demonstrations occurred in late December. On 24 December 1996 government supporters staged their first counter-rally in the capital and clashed with opposition supporters and police. Mr. Ivan Lazovic, a member of an opposition party, was shot by a man walking in a column of government supporters, but survived. One man was arrested on charges of attempted murder. Mr. Predrag Starcevic, another opposition supporter, died in hospital after being attacked by unidentified perpetrators on returning home from the demonstrations. The post-mortem examination concluded that his death was caused by physical injuries, and that earlier claims that he might have died from heart trouble were untrue.

138. Special plain-clothes police units of the Ministry of Interior were blamed for beatings of scores of demonstrators, including journalists and the leader of an independent trade union on 27 December 1996. Other police reportedly failed to intervene in these incidents.

139. In an incident on 17 October 1996 preceding the election-related demonstrations, Mr. Brkic, a journalist for the opposition paper Srpska Rec, was taken away by plain-clothes agents identifying themselves as officers of the Serbian Ministry of the Interior, shortly after he wrote reports alleging criminal activities by the police and commenting on alleged activities of a member of the President's family. He was severely beaten outside Belgrade by 14 men who it is believed belonged to the State Security Division, subjected to near suffocation and a mock execution, and was later admitted to hospital with multiple broken ribs. Staff from the Belgrade office of the High Commissioner/Centre for Human Rights who interviewed him two weeks later noted visible injuries on his body and received a medical report which was consistent with the allegations of torture. Mr. Brkic said that he was able to identify seven of his alleged attackers.

140. The Special Rapporteur wrote to Serbia's Minister of the Interior on 4 November 1996 requesting a prompt investigation and asked whether those responsible would be brought to justice. No response has so far been received. She also asked whether press reports attributing to the then Minister of Information, Mr. Aleksandar Tijanic, a statement that he would have preferred to beat Mr. Brkic himself were correct. She observed that, if true, such an attitude showed gross disrespect for basic human rights.

141. Police responsible for such abuses have generally remained above the law. Yugoslav law obliges the public prosecutor to act when it is probable that a criminal offence has been committed. If no such action is taken, or if proceedings are dropped, the injured party can initiate a prosecution. However, it appears extremely difficult to put this provision into effect. A recent report published by the Humanitarian Law Centre, a local NGO, on law enforcement practices in the Federal Republic of Yugoslavia lists specific cases demonstrating that victims are often deprived of their right to

prosecute police because prosecutors fail to act on evidence of police abuse put before them, or because they or the courts fail to give timely notice to the complainant that their complaint has been dismissed. Such notice is a prerequisite for initiating private prosecutions within the time-limits set by law.

142. In the province of Kosovo, staff of the High Commissioner/Centre for Human Rights confirmed that prosecutions against police personnel are very rare, although information was received from the head of the Public Security Police of two convictions of police for abuses. One policeman was sentenced to three years' imprisonment for the death of an arrested man who was in custody in Prizren in 1993, while another was sentenced to four years' imprisonment in 1995 for an incident of abuse in Kosovo Mitrovica. No other similar convictions have since been reported.

143. The Special Rapporteur believes that the incidence of police abuse could be substantially reduced if lawyers were granted prompt access to all arrested persons and if laws requiring that arrested persons be informed of their right to consult a lawyer were properly enforced. Local lawyers have informed the Belgrade office of the High Commissioner/Centre for Human Rights that several persons arrested during the recent demonstrations were not informed of their right to consult a lawyer and were denied counsel during their trials. Human rights officers interviewed one demonstrator, Mr. Dragan Petrovic, after his release from prison. He said that he asked for a lawyer during his trial but that the judge, who sentenced him to seven days' imprisonment for spraying slogans on a pro-Government media office building, replied that since he was only tried for a petty offence "there is no need for a lawyer".

144. Lawyers acting for several demonstrators reported that they were first denied, then eventually granted access to their clients to discuss appeals on grounds of alleged procedural irregularities. However, in several cases they were not allowed to consult with their clients in private, as international human rights standards require. For example, lawyers meeting Mr. Bulatovic in prison to discuss his appeal were obliged to do so in the presence of a government official. The Special Rapporteur requested President Milosevic, in her letter of 6 December 1996, to order an investigation into reports that lawyers were denied access to arrested demonstrators, and urged that prompt access by lawyers be invariably guaranteed.

D. Legal guarantees for human rights protection

145. In response to questions raised by the Special Rapporteur during meetings with government officials on 7 October 1996, she was informed that a new Criminal Code for the Federal Republic of Yugoslavia is in preparation and will replace the two existing Criminal Codes of Serbia and Montenegro. The Special Rapporteur has been pleased to note that the draft new Criminal Code no longer provides for capital punishment, thus strengthening the protection of the right to life.

146. The Special Rapporteur also welcomes the fact that article 196 of the Law on Criminal Procedure, permitting police to detain a person in exceptional circumstances, will be deleted from the draft Code. She is concerned about current provisions of that article which permit persons to be detained for up

to 72 hours without judicial supervision or access to a lawyer, in apparent contravention of article 9 of the International Covenant on Civil and Political Rights.

E. Kosovo - Police abuse, torture and arbitrary detention

147. The Special Rapporteur has continued to receive reports of widespread human rights violations attributed to Serbian police forces in Kosovo. These accounts follow a familiar pattern of arbitrary arrests, severe ill-treatment or torture and violent house searches, often targeted against political activists or persons working in so-called "parallel institutions" of Kosovo Albanians. While such cases have been reported throughout the region, in the last months of 1996 these abuses appear to have been particularly common in and around the towns of Podujevo, Stimlje and Vucitrn.

148. The Special Rapporteur was especially disturbed to learn that Mr. Feriz Blakcori, a 34-year-old teacher from Pristina, had died on 10 December 1996, allegedly as a consequence of torture in police custody. The day before, police had reportedly raided the house of the Blakcori family in Pristina in connection with an arms search. Mr. Blakcori was brought to a police station in Pristina, where he was allegedly tortured, and was later transferred to Pristina Hospital where he died. According to the hospital's letter of discharge, he had been admitted in a state of serious traumatic shock with contusions on his head and body and bruises on his buttocks and the left side of his back. The diagnosis appears to be consistent with the allegations of torture. In a letter of 16 December 1996, the Special Rapporteur urgently requested the Ministry of the Interior of Serbia to order an impartial investigation into this alarming incident, and to inform her of the results of the inquiry.

149. In November 1996, the Belgrade office of the High Commissioner/Centre for Human Rights conducted a mission to Pristina and Prizren and interviewed 12 persons, 11 of whom alleged having been subjected to ill-treatment or torture by police authorities in Kosovo. It should be noted that several of these persons wished for their identities to remain confidential, fearing repercussions from the police. Most of the persons interviewed further stated that they had not taken legal action against those responsible for their torture and ill-treatment, either because they could not afford to engage a lawyer, or because they were distrustful of the authorities and thus regarded any such attempt to achieve justice as futile. The following two testimonies, if verified, indicate clear violations of the right to freedom from torture or ill-treatment and the right not to be subjected to arbitrary arrest and detention. They relate to police raids carried out in connection with the investigation of the murder on 25 October 1996 of Mr. Milos Nikolic, a police officer in Surkish village near Podujevo.

150. On 31 October 1996, the police reportedly raided the home of Mr. Osman Lugaliu, 73 years old, in the village of Surkish. The police entered the house without presenting a warrant or saying why they had come, and allegedly started beating and kicking Mr. Lugaliu in front of his family. The police took him to the police station in Podujevo, where he was subjected to more beatings on the soles of his feet, his legs and his hands. After several hours of beatings and interrogations he was released without any

charges made against him. Mr. Lugaliu had to seek medical care for the injuries he suffered in the police station. The Special Rapporteur has received a medical statement on Mr. Lugaliu's injuries, which is consistent with the allegations of ill-treatment.

151. In the second incident, on 25 October 1996 at around midnight, police broke into the house of Mr. Ibrahim Fazliu, a 50-year-old bus driver, in Surkish village without presenting any warrant or court order. Mr. Fazliu, his 16-year-old son and three of his brothers were taken to the police station in Podujevo in a truck carrying some 30 other persons who had been rounded up in the village. Outside the police station in Podujevo, Mr. Fazliu was severely beaten and kicked by two police officers who apparently continued the ill-treatment even after he had lost consciousness. However, he told HC/CHR staff that a senior police officer intervened to halt the beating. When he regained consciousness he was taken into the police station and questioned about the murder of the police officer, Mr. Nikolic. After a short interrogation, Mr. Fazliu was allowed to leave. He was treated for his injuries at a private clinic and at the public hospital in Pristina. A statement issued by the Pristina hospital on Mr. Fazliu's injuries supports the allegations of ill-treatment.

152. On 16 December 1996, the Special Rapporteur submitted detailed information on the above incidents and two other similar cases to the Minister of the Interior of Serbia, requesting the Ministry urgently to investigate the allegations and inform her about any results. The Special Rapporteur noted that the Federal Republic of Yugoslavia is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and as such is obliged under article 12 to undertake prompt and impartial investigations of alleged acts of torture.

153. On 16 October 1996 two men, Mr. Avni Nura and Mr. Besim Ramaj, were reportedly arrested by the police on the road between Lubovec and Galice. However, officials refused to acknowledge their detention for 16 days. On 2 November they were brought before an investigative judge on charges of "terrorist activities", but without the presence of a lawyer. The two men were allegedly beaten during the 16 days they spent in incommunicado detention and as a result reportedly sustained injuries requiring medical attention. However, it appears that they were denied access to medical care, despite repeated requests by the men themselves and by their lawyer. The lawyer further complained that the investigative judge prevented him from discussing any case-related matters with his clients.

F. Kosovo - Return of asylum-seekers

154. Staff of the HC/CHR interviewed two Kosovo Albanian men who were returned to Kosovo in September 1996, after their applications for political asylum were rejected by Germany. Both of the men alleged that they had been physically ill-treated and harassed by the Serbian police upon their return to Kosovo. One of the asylum-seekers, Mr. Xhafer Bardiqi, stated that following his return to Kosovo on 14 September 1996, he was summoned to police headquarters in Glogovac, where he was beaten on his hands, face and chest by police officials using truncheons. After two hours of severe ill-treatment, he passed out. When he regained consciousness, he was interrogated about his

stay in Germany. After several hours of questioning and beatings, he was released and told that he would be called to further interrogations. Mr. Bardiqi had to seek medical care for the injuries he sustained as a result of the ill-treatment.

155. A number of European Governments have in recent months expressed their intention to return asylum-seekers and other persons without legal residence to the Federal Republic of Yugoslavia. The vast majority of the persons who would be affected by these planned return programmes originate from Kosovo, and many of them left the Federal Republic of Yugoslavia in the early stages of the conflict in the former Yugoslavia in order to avoid being drafted into the Yugoslav Army, or because of their political views on the Kosovo situation. On the basis of information presently available, it is difficult to determine whether the testimonies referred to above reflect isolated incidents or are representative of the general behaviour and policy of the authorities toward returnees. However, in view of the seriousness of these allegations and the overall situation in Kosovo, it is evident that any planned return programme for rejected asylum-seekers to that region should include appropriate safeguards to ensure their security and fair treatment upon return.

G. Kosovo - Education

156. In her report of 25 October 1996 on the situation of minorities in the Federal Republic of Yugoslavia, the Special Rapporteur took note of the agreement on the normalization of education in Kosovo signed by President Milosevic and Dr. Rugova on 1 September 1996, and expressed her concern about the apparent lack of progress in implementation of the accord. The agreement has been widely seen as a possible opening for a more comprehensive solution of the Kosovo situation. Both sides have now appointed their representatives to the commission whose task it is to implement the agreement, but the body has held no meetings so far. It is worth noting that the document does not define terms, conditions or dates for its implementation, which has led to disputes regarding the way to bring the process forward.

157. A major obstacle to progress appears to be a disagreement regarding the presence of a third party in the next phase of the talks: while the Albanian side insists on the participation of a third party as a mediator in the process, the Serbian Government appears to regard implementation of the agreement as an internal matter not warranting any foreign involvement. Another contentious issue is the question of the curricula to be followed in the schools. The Serbian side insists on the reintegration of the Albanian students into the national scheme and educational programmes, as defined by the Serbian Ministry of Education. The Albanian delegation, however, maintains that the curricula developed and approved by the Kosovo Albanian "parallel" educational authorities should remain in force, and that access to the school buildings is the only issue up for discussion. Terms and conditions for the admission of Albanian students, particularly to the University in Pristina, appear to be another open issue.

H. Conclusions and recommendations

158. The Special Rapporteur considers it of paramount importance that human rights be upheld in the present critical situation where many thousands of people persistently seek to exercise their right to peaceful assembly and to freedom of expression, as occurred following the November 1996 municipal elections. She is seriously concerned that standards for free and fair elections provided for by the International Covenant on Civil and Political Rights were not met in those elections, in which evidence suggested that existing mechanisms to check preliminary election results were abused in favour of the ruling party.

159. The Government of the Federal Republic of Yugoslavia should take appropriate and prompt action to rectify the situation presented by the contested elections, notably by implementing the conclusions of the investigation conducted by the OSCE which found that the opposition coalition had won the elections in Belgrade and other major Serbian cities.

160. There is a virtually total lack of independent electronic media in the country to provide fair and balanced reporting. Print media engaged in such reporting have been subjected to pressure. The right to freedom of expression should be effectively protected, and media should be able to operate in conditions of genuine freedom and fairness. The Government should give assurances that it will not take action, as it regrettably did during the demonstrations in late 1996, against any electronic or print media which provide news which might be seen as critical of the Government.

161. The lack of independent electronic media with nationwide coverage should be addressed in the period preceding the 1997 republican elections in Serbia. In order to ensure that all citizens are effectively guaranteed the right to receive information and ideas of all kinds, the Government should consider permitting a genuinely independent television channel to operate nationwide.

162. The Government should also consider inviting or permitting international observers to monitor the forthcoming republican elections.

163. Considering the hostile nature of statements which were broadcast on State television in respect of peaceful demonstrators, the Government should ensure that prompt action is taken against any persons or institutions which violate constitutional provisions prohibiting incitement to hostility and violence.

164. All allegations of ill-treatment or torture, of which some of the most serious come from Kosovo, should be promptly investigated by an impartial authority. The Government may consider establishing an independent control or supervisory mechanism to that end, and reviewing whether police training methods incorporate relevant international human rights standards regarding the use of force. Judges should be obliged to promptly verify allegations of ill-treatment or torture and to order immediate relief.

165. The Government should ensure that no persons are convicted on the basis of statements extracted by torture or by other forms of cruel, inhuman or degrading treatment or punishment, as has apparently recently happened. Those responsible for committing such acts should be brought to justice.

166. The Government should review relevant legal provisions to ensure that all arrested persons are allowed prompt access to a lawyer of their choice. Judges should be reminded that they are obliged to inform arrested persons of the right to consult a lawyer. All relevant authorities should be instructed to ensure that lawyers are able to communicate freely and in confidence with their clients, and that consultations may be within sight, but not within hearing, of law enforcement officials.

167. The Special Rapporteur is deeply disturbed by continuing reports of serious and widespread human rights violations by Serb police forces in Kosovo, including torture and ill-treatment and arbitrary detention. She urgently calls on the competent authorities in the Federal Republic of Yugoslavia to put an end to these abuses by implementing the measures recommended above throughout the Federal Republic, including in Kosovo.

168. Rejected asylum-seekers and other persons who are returned to the Federal Republic of Yugoslavia must be able to do so without fear of repercussions and persecution. Governments considering returning such persons to the Federal Republic of Yugoslavia should take appropriate measures, including legal guarantees and follow-up mechanisms, to allow these persons to return to their homes in safety and dignity.

169. Disputes over technical details and political considerations should not be allowed to block the implementation of the September 1996 agreement on the normalization of education in Kosovo. The process must be guided by the needs of the students in Kosovo, and both sides should show flexibility and readiness to cooperate in order to find a lasting solution to this problem.

170. On the question of Sandzak, discussed at length in her two previous reports (see especially E/CN.4/1997/8, paras. 75-92), the Special Rapporteur will provide an update in her next communication to the Commission on Human Rights.

171. The Special Rapporteur notes that, so far, the Government has not reacted to most of the recommendations which she made in her previous report to strengthen legal and other guarantees for human rights protection in the Federal Republic of Yugoslavia, including her recommendation that the Government ratify the Optional Protocol to the International Covenant on Civil and Political Rights. She wishes to focus again on the specific recommendations she has made and requests the Government to give serious consideration to their implementation.

V. GENERAL CONCLUSIONS AND RECOMMENDATIONS

172. The situation in the territory of the Special Rapporteur's mandate has improved since the fifty-second session of the Commission on Human Rights. Nevertheless, serious human rights violations continue to occur. The crucial prerequisite for improved human rights protection is support for the

restoration of civil society. Efforts should concentrate on the creation and strengthening of relevant institutions and mechanisms at both the national and local levels.

173. The healing of society in the territory of the former Yugoslavia demands that alleged grave violations of humanitarian law be fully and fairly reviewed before the International Criminal Tribunal. The Special Rapporteur has been deeply disappointed by the lack of cooperation of most governmental authorities in the region with the Tribunal, and she calls on them to change these policies immediately.

174. While maintaining her call for continued economic assistance to the countries in her mandate for their reconstruction, the Special Rapporteur believes that local authorities must be kept aware that such assistance (to be distinguished from emergency humanitarian aid) depends expressly on their demonstrated respect for the principles of international human rights.

175. The Special Rapporteur remains deeply concerned by the phenomenon referred to in previous reports, which she has called "silent emergencies". Orphaned children, victims of rape, mentally handicapped residents of forgotten institutions - many people are suffering in silence in the former Yugoslavia who deserve the attention and assistance of the international community. The families of missing persons are among this group, and resources should be found to meet their needs, to perform the difficult work of identifying the dead in mass graves, to determine finally the fate of those who have gone missing during five years of war. Authorities throughout the territory must receive additional technical support for the task of identifying human remains.

176. Religious leaders have a special responsibility to contribute to the moral rebirth of communities torn apart by war. The Special Rapporteur has been impressed by the calls of some religious leaders for forgiveness and learning to live together again. She asks all religious leaders in the territory to exercise their unique leadership role by delivering a clear message of reconciliation, not recrimination.

177. Important elections will be held in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia in 1997. While primary responsibility for ensuring their fairness rests with national and local authorities, the international community should also be invited to assist with fully qualified and well-prepared monitoring missions.

178. Independent media are central to the process of democratization. The Special Rapporteur looks for increased freedom of expression in the coming months, and she calls on all Governments to ensure broader access to the mass media for opposition voices, especially in connection with the upcoming elections.

179. Children represent the future of society in the former Yugoslavia and the hope of transcending past tragedy. Their feelings and dreams may be seen in the pictures they make, in drawings and paintings which have captured the attention of the Special Rapporteur in her visits to the territory. The Special Rapporteur is bringing together these pictures for an exhibition she

is organizing to be shown in Finland and, she hopes, other locations. All possible initiatives to support the aspirations of children, including projects for human rights education and for bringing children from different communities together, should be generously supported by local and international authorities for the sake of the region's future.

180. The effective implementation of the Special Rapporteur's mandate requires frequent missions to the territory as well as the maintenance of a strong field presence. In this regard the Special Rapporteur welcomes last year's statement of the Commission on Human Rights urging the Secretary-General, from within existing resources, to make all necessary resources available for the Special Rapporteur to carry out her mandate successfully, including by providing her with adequate field staff (resolution 1996/71, para. 46). At the same time she urges Member States to continue to support her activities and those of the Human Rights Field Operation of the High Commissioner/Centre for Human Rights with generous voluntary contributions.

181. In reference to the Commission's request to the Special Rapporteur to continue to compile an overview of the human rights situation since 1991, she will present at the Commission's next session a plan for such an overview along with its financial implications.

182. The Special Rapporteur recommends that the Commission on Human Rights extend her mandate for the coming year. Developments during this time will be critical for the advancement of human rights in the countries to which she has devoted her attention. Their situations are profoundly interrelated, and the policies of their Governments will continue to have important effects not only within but outside their borders. It would be the goal of the Special Rapporteur to continue to use the exceptional independence afforded by her mandate to make observations which others may hesitate to adopt, but which hopefully may contribute to genuine respect for human rights throughout the region.

Annex

PROGRAMME OF MEETINGS OF THE SPECIAL RAPPORTEUR

Mission of 2-7 May 1996

2 May 1996

Pristina

Dr. Ibrahim Rugova	President of the Democratic League for Kosovo
Mr. Veton Suroy	Editor of KOHA
Mr. Sevdije Ahmeti	Centre for Protection of Women and Children
Ms. Zdenka Todorov	President of the Board for Protection of Human Rights of the Bulgarian national minority, Dimitrovgrad
Mr. Gazmend Pula	Helsinki Committee for Kosovo
Mr. Adem Demaqi	Council for the Defence of Human Rights and Freedoms

3 May 1996

Mr. Milos Nesovic	Deputy Head of Kosovo county
Prof. Marinko Bozovic	Secretary of the Secretariat for Education, Culture and Science of the Autonomous Province of Kosovo and Metohija
Mr. S. Bujosevic	Director of the Clinical Centre
Mr. Bosko Drobnjak	Secretary of the Secretariat for Information of the Autonomous Province of Kosovo and Metohija

Collective refugee shelter
Pristina Clinical Centre

Mr. M. Mijatovic	Head of Police for Kosovo county

Novi Pazar

Dr. Ismet Kalic	Helsinki Committee
Mr. S. Alomerovic	Chairman of the Helsinki Committee
Mr. S. Bandzovic	President of the Board for Protection of Human Rights
Mr. K. Jovanovic	Mayor

Committee for Protection
of Human Rights

4 May 1996

Priboj

Displaced from Sjeverin area

Prijepolje

Committee of families of abducted persons

5-7 May 1996

Tuzla/Banja Luka/Prijedor

Women refugees from Srebrenica	
Mr. Selim Beslagic	Mayor of Tuzla
Nordic and Swedish battalions	
H.E. Mr. Rajko Kasagic	Prime Minister of the Republika Srpska
Mr. Slobodan Jovanovic	President of the Liberal Party
International and local authorities	

Mission of 23-28 June 1996

23 June 1996

Belgrade

Ms. Margaret O'Keeffe	Chief of Mission, UNHCR
Ms. Vera Webel	Chairman of Antiwar Centre-ADA
Mr. Isztvan Webel	Antiwar Centre-ADA
Mr. Tybor Tajty	Antiwar Centre-ADA
Ms. Gordana Igric	Journalist
Mr. Zoran Tmusic	Journalist

24 June 1996

H.E. Mr. Slobodan Milosevic	President of the Republic of Serbia
H.E. Ms. Margit Savovic	Federal Minister for Freedoms of the Citizen and Minority Rights

Novi Sad

Mr. Miklozs Biro	Helsinki Committee
Mr. Pavel Domonji	Provincial Secretary for Fulfilment of the Rights of National Minorities, Administration and Legislation
Mr. Karadzic	Provincial Secretary for Culture
Mr. Ljubomir Lukic	Provincial Secretary for Information
Dr. Milutin Stojkovic	President of the Assembly of Vojvodina
Mr. Andrasz Agoston	Democratic League of the Vojvodina Hungarians

25 June 1996

Mr. Jozsef Kasza	Mayor of Subotica
Mr. Laszlo Jozsa	Democratic Alliance of the Vojvodina Hungarians

Mr. Tomas Korhecz	NGO (Alliance for Protection of Human and Minority Rights - "Ravnopravnost")
Mr. Bela Tonkovic	President of the Democratic Union of the Vojvodina Croats
Mr. Josip Gabric	Member of the Main Board of the Democratic Union of the Vojvodina Croats
Mr. Milivoj Prcic	Head of the Board for Protection of Human Rights of the Democratic Union of the Vojvodina Croats
Mr. Mile Jovicic	Head of County, Northern Backa

Erdut

Mr. Jacques Paul Klein	Transitional Administrator, UNTAES
Mr. Derek Boothby	Deputy Transitional Administrator, UNTAES
Mr. Steven Green	Officer in Charge, Joint Implementation Committee Secretariat
Ms. Anna Korula	Chair of the Sub-Committee on Human Rights Training, UNTAES

Women's group
Human rights NGOs from Croatia
and FRY attending OXFAM conference

<u>26 June 1996</u>

Sarajevo

Visit to Kravice area near Srebrenica

H.E. Mr. Carl Bildt	High Representative
Adm. Leighton Smith	IFOR Commander
Amb. Carlo Ungaro	Head of ECMM
H.E. Mr. Hasan Muratovic	Prime Minister of Bosnia and Herzegovina
Mr. Nudzeim Recica	Minister for Refugees, Bosnia and Herzegovina
Mr. Amor Masovic	President of the Commission for Exchange, Bosnia and Herzegovina
Mr. Avdo Hebib	Minister of Interior, Bosnia and Herzegovina
Mr. Rasim Kadic	President of the Bosnia and Herzegovina Liberal Party

<u>27 June 1996</u>

Travnik/Vitez

International and local authorities
Displaced persons and other residents
Visit to the Travnik and Vitez primary schools

28 June 1996

Sarajevo

Mr. Srdan Dizdarevic	President of Bosnian Helsinki Committee
Amb. Robert H. Frowick	Head of OSCE Mission

Zagreb

H.E. Dr. Mate Granic	Minister for Foreign Affairs of Croatia
H.E. Dr. Ljerka Mintas-Hodak	Deputy Prime Minister of Croatia
Ms. Biljana Tatomir	Member of the Civic Initiative for Freedom of Speech
Dr. Zarko Puhovski	University Professor
Dr. Nadezda Cacinovic	University Professor
Mr. Ivica Racan	President of the Social Democratic Party
Dr. Ivo Sanader	Head of the Office of the President of the Republic
Dr. Zeljka Cvetka	Deputy Director of the Clinic for Children's Diseases
Children	At the Clinic for Children's Diseases

Mission of 3-10 August 1996

3 August 1996

Zagreb

Residents	Villagers in former Sector North
Mr. Songva Wycleffe	UNHCR Karlovac

4 August 1996

Amb. Alexander Lebedev	Head, United Nations Liaison Office-Zagreb
Ms. Jelca Glumicic	Committee for Human Rights Karlovac
Ms. Nada Radovic	Committee for Human Rights Karlovac
Ms. Mirjana Galo	HOMO, Vrhovine
Mr. Beny Otim	UNHCR, Knin
Ms. Veronique Dumas	ICRC, Knin
Mr. Ivan Zvonimir Cicak	Croatian Helsinki Committee
Ms. Olja Simic	Croatian Helsinki Committee
Mr. Majo Pavic	Croatian Helsinki Committee
Residents	Former Sectors North and South

5 August 1996

Dubrovnik

Staff Meeting of the Human Rights Field Operation in the Former Yugoslavia (HRFOFY)

6 August 1996

Podgorica

Mr. Slobodan Franovic	President of the Helsinki Committee Montenegro
Ms. Branka Kovacevic	Helsinki Committee Montenegro
Ms. Marusic	Helsinki Committee Montenegro
Ms. Perovic	Helsinki Committee Montenegro
Mr. Ljaro Markic	Helsinki Committee Montenegro

7 August 1996

H.E. Mr. Momir Bulatovic	President of the Republic of Montenegro
H.E. Mr. Filip Vujanovic	Minister of Interior of Montenegro
H.E. Mr. Miodrag Latkovic	Minister of Justice of Montenegro
Mr. Abdul Kurpejovic	President of the Democratic Forum for Human Rights and Ethnic Relations in Montenegro (NGO)
Mr. Pierfrancesco Natta	UNHCR, Podgorica

8 August 1996

Mostar

Sir Martin Garrod	European Union Administrator
Displaced persons from Stolac and Caplina	
Helsinki Human Rights Group	
Recent victims of eviction	
Mr. Seid Smajkic	Mufti of Mostar
Lunch with representatives of European Union Administration	

Sarajevo

Mr. Robert Wasserman	Deputy Commissioner, IPTF
Judge Fynn Lyngham	Electoral Appeals Sub-Commission, OSCE
Mr. Craig Jennesse	Legal Adviser, OSCE

9 August 1996

H.E. Mr. Haris Silajdzic	President of the Party for Bosnia and Herzegovina
H.E. Mr. Ivo Komsic	Member of the Bosnia and Herzegovina Presidency
H.E. Mr. Mirko Pejanovic	Member of the Bosnia and Herzegovina Presidency
Mr. Mladen Pandurevic	Serb Civic Council
Mr. Geoff Beaumont	United Nations Liaison Office, Pale

Mr. Alexsa Buha	Acting Foreign Minister of the Republika Srpska
Ms. Angela Koenig	OSCE
Meeting with women's Group Zene 21	

Grbavica

Ms. Morgan Moris	UNHCR
Ms. Maureen Lyons	UNHCR
Residents	

Sarajevo

H.E. Mr. Tadeusz Mazowiecki	Former United Nations Special Rapporteur
Mr. Zdravko Grebo	Sarajevo Law Centre
Ms. Zdravka Grebo	Job 22
Mr. Dusan Kalember	Open Society Fund/Soros Foundation
Mr. Srdan Dizdarevic	President of the Bosnian Helsinki Committee
Ms. Svjetlana Derajic	Bosnian Helsinki Committee

10 August 1996

Cardinal Vinko Puljic	Prelate of Sarajevo

Banja Luka

Ms. Biljana Plavsic	Acting President of the Republika Srpska
Mr. Alun Roberts	UNMIBH Press Officer, Banja Luka
Ms. Larisa Gabriel	OSCE, Banja Luka
Meeting with lawyers organized by OSCE	
Ms. Kiran Kaur	UNHCR, Banja Luka
Meeting with Vrbanje expellees organized by UNHCR	

Mission of 5-12 October 1996

5 October 1996

Pristina

Mr. Michael McClellan	Head of United States information office, Pristina

6 October 1996

Mr. Aleksa Jokic	Head of county
Mr. Milos Nesovic	Deputy head of county
Mr. Veljko Odalovic	Assistant to the head of county
Prof. Marinko Bozovic	Secretary of the Secretariat for Education, Culture and Science of the Autonomous Province of Kosovo and Metohija

Mr. Bosko Drobnjak	Secretary of the Secretariat for Information of the Autonomous Province of Kosovo and Metohija
Dr. Vesna Maksimovic	Head of the Children's Hospital in Pristina
Dr. Ibrahim Rugova	President of the Democratic League for Kosovo
Mr. Adem Demaqi	President of the Council for Protection of Human Rights and Freedoms
Mr. Pajazit Nushi	Member of the Board for the Council for Protection of Human Rights and Freedoms

7 October 1996

Belgrade

H.E. Ms. Margit Savovic	Federal Minister for Freedoms of the Citizen and Minority Rights
H.E. Mr. Zoran Sokolovic	Minister of the Interior of Serbia

7-8 October 1996

Vukovar

Mr. Milenko Vucetic	President, Serb Displaced Persons' Association
Mr. Spiro Lazinica	Serb Displaced Persons' Association and Baranja Democratic Forum
Prof. Stefan Crnogorac	President, Baranja Democratic Forum
Other members of the Baranja Democratic Forum	
Dr. Nada Radmanovic	Baranja Democratic Forum and Director, Beli Monastir Health Centre
Ms. Gordana Stojanovic	President, Baranja Association for Peace and Human Rights
Mr. Slobodan Peric	President, Helsinki Committee for Human Rights (provisional), Beli Monastir
Other members of the Helsinki Committee for Human Rights (provisional), Beli Monastir	
Ms. Gordena Klinger	Association of Women for Peace and Democracy of Baranja
Mr. Jacques Paul Klein	Transitional Administrator, UNTAES
Mr. Gerald Fischer	Head of Civil Affairs, UNTAES
Mr. Henrik Amneus	Principal Human Rights Adviser, UNTAES
Mr. Douglas Coffman	Press Officer, UNTAES
Other representatives of UNTAES	
Ms. Katarina Kruhonja	President of the Center for Peace, Non-violence and Human Rights, Osijek
Other members of the Center for Peace, Non-violence and Human Rights, Osijek	

Prof. Slavica Singer	Coordinator at the Croatian Helsinki Committee, Osijek
Prof. Jaroslav Pecnik	Coordinator at the Croatian Helsinki Committee, Osijek
Mr. Mato Simic	Displaced Persons' Association of Croatia
Ms. Stefica Krstic	President, Association of Families of Confined and Missing Croatian Defenders, Osijek
Dr. Rade Popovic	Director of Vukovar Hospital
Mr. Onofre Dos Santos	Chief, Electoral Division, UNTAES
Mr. Winston Tubman	Head of Legal Affairs, UNTAES
Mr. Vogaslav Stanimirovic	President of Executive Council, Borovo Naselje
Mr. Branko Jurisic	Secretary for Human Rights Department, Borovo Naselje
Mr. Vojan Susa	Secretary for Justice, Borovo Naselje
Mr. Tankosic Mirko	Deputy Head of the Croatian Government Office, Osijek
Mr. Drazen Matijevic	Head of the Croatian delegation at the Human Rights JIC
Mr. Gilbert Despitch	Project Coordinator of Médecins sans frontières, Vukovar
Mr. Martin Broers	Information Officer of Médecins sans frontières, Vukovar
Ms. Ankica Mikic	Coordinator, Center for Peace, Legal Advice and Psycho-Social Assistance, Vukovar
Ms. Milena Jurisic	Legal Adviser
Ms. Vera Dosen	Women's Association, Vukovar
Mr. Symeon Antoulas	Head of ICRC, Vukovar
Ms. Barbara Davis	Head of OSCE, Vukovar

9 October 1996

Sarajevo

Ms. Vera Jovanovic	Federation Ombudsman
Ms. Branka Raguz	Federation Ombudsman
Mr. Esad Muhibic	Federation Ombudsman
Mr. Bekir Kapetanovic	President of Bosnia and Herzegovina State Commission for War Crimes
Mr. Mirsad Tokaca	Bosnia and Herzegovina State Commission for War Crimes
H.E. Mr. Carl Bildt	High Representative

Dinner with contact group
and donor country ambassadors

10 October 1996

Amb. Robert H. Frowick	Head of OSCE Mission
Mr. Iqbal Riza	Chief, UNMIBH

H.E. Mr. Kresimir Zubak	Member of Bosnia and Herzegovina Presidency
H.E. Mr. Momcilo Krajisnik	Member of Bosnia and Herzegovina Presidency
H.E. Mr. Ejub Ganic	Vice President of the Federation of Bosnia and Herzegovina
Mr. Clive Cavanagh Mental Retardation Institution "Zovik" organized by WHO	WHO
Mr. Alex Ivanko Journalist round-table organized by UNMIBH	Press Officer, UNMIBH

11 October 1996

Zenica

NGO "Medica"
Association of Citizens
from Mixed Marriages
Mr. Gregory Bakken — Norwegian People's Aid
Visit to orphanage

Jusici/Zvornik

Representatives of returnees, IPTF, IFOR
Republika Srpska police and detainees, Zvornik prison

12 October 1996

Zagreb

H.E. Dr. Mate Granic	Minister of Foreign Affairs
H.E. Dr. Jure Radic	Minister of Reconstruction
H.E. Ms. Ljilja Vokic	Minister of Education
Ms. Dubravka Simonovic	Head of Human Rights Dept., Ministry of Foreign Affairs
Mr. Ivan Zvonomir Cicak	Croatian Helsinki Committee
Ms. Zdenka Farkas	APEL (Association of Missing Persons)
Dr. Ljubica Butula	Croatian Fenix

Mission of 20-27 November 1996

20 November 1996

Zagreb

Mr. Ante Klaric	Ombudsman
Prof. Zarko Puhovski	Croatian Helsinki Committee
Ms. Dafinka Vecerina	Croatian Helsinki Committee
Mr. Bozo Kovacevic	Croatian Helsinki Committee
Mr. Jovan Naholic	Croatian Helsinki Committee

Mr. Danijel Ivin	Organisation DOM
Mr. Peter Galbraith	United States Ambassador
Ms. Marta Paterson	United States Embassy

21 November 1996

Amb. Albertus Nooij	Head of OSCE Mission in Croatia
H.E. Dr. Ljerka Mintas-Hodak	Deputy Prime Minister
H.E. Mr. Miroslav Separovic	Minister of Justice
Mr. Slobodan Budak	Head of Croatian Law Centre
Mr. Mihajlo Dika	Croatian Law Centre
Ms. Snjezana Gasic	Croatian Law Centre
Mr. Goran Mikulicic	Croatian Law Centre

Velika Kladusa/Bihac

Mr. Ejub Alagic	Mayor of Velika Kladusa
Mr. Fikret Hadic	Chief of Police in Velika Kladusa
Mr. Anatoli Petsko	Officer, IPTF

Dinner with heads of UNHCR, OSCE, ECMM, ICRC, UNMIBH

22 November 1996

Bihac/Sanski Most/Banja Luka

Visit to Bihac prison
Meeting with representatives of opposition parties

Mr. Adam Boric	President of Una-Sana Cantonal Parliament
Mr. Mehmed Alagic	Mayor, Sanski Most
Mr. Nurija Jakupovic	Chief of Police, Sanski Most
Mr. Samuel Piazza	IPTF, Sanski Most

Meeting with displaced persons in Kopriva village (Sanski Most municipality)

Dinner with heads of IPTF, WFP, OSCE, ICRC, Office of the High School, ECMM in Banja Luka

23 November 1996

Banja Luka

Meeting with women's group "DUGA"

H.E. Ms. Biljana Plavsic	President, Republika Srpska
Mr. Dejan Samara	Chief of Police, Banja Luka
Mr. Stojan Davidovic	Associate Chief of Police, Banja Luka

Visit to Banja Luka orphanage
Meeting with Bosniak evictees

Mr. Branka Panic	Head of Association of Captured and Missing Serb Civilians and Soldiers

Media round-table organized by
Mr. Alun Roberts and
Mr. Alex Ivanko — Press Officers, UNMIBH

Meeting with Banja Luka law students and professors

Dinner with members of human rights groups in Banja Luka

24 November 1996

Ms. Milka Ivanovic	Deputy of the Association of Serbs from Drvar
Mr. Ibrahim Halilovic	Imam of Banja Luka
Mr. Boro Martinovic	Head of Krajina Serb association
Dr. Zeljko Karan	Pathologist and forensic expert
Mr. Milomir Stakic	Mayor of Prijedor
Mr. Ranko Mijic	Chief of Police in Prijedor

Meeting with Banja Luka opposition leaders
Meetings with heads of UNHCR, IFOR, OSCE and ECMM

25 November 1996

Bugojno

Joint mission with Federation Ombudsmen and meetings with individual petitioners, organized by OSCE

Mr. Dzevad Mlaco — Mayor of Bugojno

26 November 1996

Tuzla

Finnish forensic experts
Visit to Tuzla hospital
Meetings with returnees, IPTF and IFOR in Celic/Koraj

Bijeljina

Mr. Branko Todorovic	Helsinki Committee, Bijeljina
Mr. Dragomir Ljubojevic	Mayor, Bijeljina
Mr. Branko Stevic	Chief of Police, Bijeljina
Mr. Slobodan Avlijas	Assistant Minister of Justice, Republika Srpska

Meetings with detainees at Bijeljina prison
Meeting with Bijeljina lawyers

27 November 1996

Mr. Carrol Faubert	UNHCR Special Envoy
H.E. Mr. Alija Izetbegovic	Member of the Presidency
Mr. Jarkko Irpola	Director of OSCE Regional Centre for Sarajevo and Gorazde
Mr. Peter Jones	Chief of Staff, UNMIBH
Amb. Michael Steiner	Principal Deputy High Representative

Mission of 7-8 December 1996

Sarajevo

Inaugural conference of the Human Rights Centre, University of Sarajevo

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UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/57
21 February 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Iraq, submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Max van der Stoel, pursuant to Commission resolution 1996/72

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GE.97-10610 (E)

Introduction

1. The Special Rapporteur has referred in detail to the terms of his mandate in, inter alia, the introductions to his first four reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 1-17; E/CN.4/1993/45, paras. 1-5; E/CN.4/1994/58, paras. 1-2; E/CN.4/1995/56, paras. 1-3; and E/CN.4/1996/61, paras. 2-3); additional references have been made in the introductions to most of his reports to the General Assembly. There was no substantive change to his mandate in the last year.

2. The present report is submitted pursuant to paragraph 11 of Commission on Human Rights resolution 1996/72 of 23 April 1996, as approved by Economic and Social Council decision 1996/277 of 23 July 1996. An interim report was submitted, pursuant to the same resolution, to the fifty-first session of the General Assembly (A/51/496 of 15 October 1996 and A/51/496/Add.1 of 8 November 1996). The Special Rapporteur intends the present report to be read in conjunction with his interim report to the General Assembly.

3. The Special Rapporteur has continued to receive information from a variety of sources. Notwithstanding the continuing lack of cooperation on the part of the Government of Iraq (notably its refusal to allow the stationing of United Nations human rights monitors throughout the country as requested repeatedly in resolutions of the General Assembly and the Commission on Human Rights), the Special Rapporteur has benefited considerably from information gathered by staff members of the United Nations Centre for Human Rights who have travelled to countries bordering Iraq. Specifically, the following three missions were conducted in the last year in order to receive testimonies and other information from refugees and other persons of interest recently arrived from Iraq: from 4 to 10 April 1996 in Jordan; from 13 to 25 October 1996 in the Islamic Republic of Iran; from 20 to 27 January 1997 in Jordan and Kuwait. Information received during the first two missions was included in the Special Rapporteur's interim report to the fifty-first session of the General Assembly, i.e. in A/51/496 and A/51/496/Add.1, respectively. Information received during the most recent mission has been included in the present report.

4. In addition to testimonies and other information received through the missions mentioned above, the Special Rapporteur has continued to receive information, including both general and specific allegations, from a wide variety of sources. The Special Rapporteur has also studied official documents of United Nations agencies and bodies relevant to the situation of human rights in Iraq.

5. With regard to the legal framework within which the Special Rapporteur assesses the compliance of Iraq with its freely undertaken obligations under international law, it is to be recalled that Iraq is a party to, inter alia, the Charter of the United Nations; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child;

the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education; the Constitution of the International Labour Organization (ILO); ILO Conventions No. 98 concerning the right to organize and bargain collectively, No. 107 concerning indigenous and tribal populations, and No. 111 concerning discrimination in respect of employment and occupation; and the four Geneva Conventions of 12 August 1949. It is also to be recalled that there are no special circumstances which Iraq may invoke by way of permissible excuses under international law for failure to respect its undertakings, nor has Iraq ever notified the Secretary-General of any derogation from its specific obligations (in this connection, see E/CN.4/1992/31, paras. 22-39). Consequently, all relevant obligations of Iraq maintain their normal legal effects. In addition, there exist special obligations of relevance to the human rights situation in Iraq as a result of a number of Security Council resolutions, notably resolutions 661 (1990), 666 (1990), 687 (1991), 688 (1991), 706 (1991), 712 (1991), 778 (1992), and 986 (1995).

6. The information contained in the present report is up to date as of 14 February 1997.

I. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

A. General situation

7. In so far as the politico-legal system in Iraq remained unchanged in the last year, there continued to be systematic violation of the civil and political rights of the Iraqi people throughout the country. This system has previously been reported on and analysed in detail by the Special Rapporteur, notably in his report to the fiftieth session of the Commission on Human Rights (E/CN.4/1994/58, paras. 159-189). In his interim report to the fifty-first session of the General Assembly, the Special Rapporteur recalled the main features of the prevailing political regime (see A/51/496, paras. 43-48). In short, Iraq is a dictatorial, totalitarian State which allows no political dissent. Freedoms of opinion, expression, association and assembly do not exist in Iraq. Of fundamental importance, the political regime is in violation of Iraq's obligations under article 21 of the Universal Declaration of Human Rights to ensure that the genuine will of the people is the basis of authority of government and under article 25 of the International Covenant on Civil and Political Rights to hold "genuine periodic elections ... guaranteeing the free expression of the will of the electors" and guaranteeing "freely chosen representatives". Rather, all authority is held in the hands of the President who, through all-powerful offices of government and the Arab Baath Socialist Party which he heads, conducts life in Iraq as he wishes.

8. Of vital importance to the maintenance of the present political regime in Iraq is the complex, vast and infamous security apparatus which the President controls directly and through his youngest son Qusay Hussein. The position of power enjoyed by the President is subject to the most extreme abuse which continues to bear especially heavily upon any threat of opposition - real or perceived. The Special Rapporteur has previously analysed the systematic abuse of power in Iraq (see E/CN.4/1994/58, paras. 177-184). The elevated and protected status both of the security apparatus and of the Baath Party extends the scope and effects of abuse of

power throughout the country. A substantial increase in official corruption (essentially government tolerated, if not encouraged, by the Government) and criminality has only exacerbated the situation, rendering the whole population subject to the arbitrary, widespread and self-centred interests of a privileged class of government officials and Baath Party leaders. Impunity even for serious assaults and extrajudicial killings encourages the abuse of power. This results in widespread violation of the rights to liberty and to respect for personal security. Such serious abuses of power over a period of decades, along with the effective proscription of dissenting opinion, expression, association or assembly, have acted to render Iraqis essentially compliant. In sum, the essence of human rights, i.e. respect for the dignity of the individual human being, has been and continues to be systematically and completely violated in Iraq.

B. The rights to life, liberty and personal security

9. The Special Rapporteur has reported about extrajudicial executions and indiscriminate killings of civilians which allegedly accompanied the use of Iraqi military and security forces during the events in northern Iraq beginning on 31 August 1996 (A/51/496/Add.1, paras. 5-10). The indiscriminate shelling of, inter alia, the city of Arbil, resulting in the death or injury of numerous innocent civilians, was confirmed. Persons found in the offices of opposition groups were reportedly summarily executed as was a group of 96 pesh merga who had been captured by Iraqi government forces.

10. During the same events in northern Iraq, many members of opposition groups (and sometimes their families) were arbitrarily arrested and detained with some allegedly being tortured (A/51/496/Add.1, paras. 13-17).

11. While Iraqi military forces subsequently withdrew from the territories of northern Iraq to which they had advanced, reports and allegations received allege that the Iraqi security services and their agents remain active in the region. Specific allegations of political killings by Iraqi security forces in the area include the cases of Ahmed Muhi Ahmed and Kutaiba al-Nakib who were killed on 9 November 1996 in the city of Dohuk.

12. In the course of the year, the Special Rapporteur has also received unconfirmed reports of periodic arrests, usually followed by at least some executions, of military and tribal leaders on the basis of real or imagined assassination plots. For example, allegations have been received that a large number of military officers were arrested at the end of June 1996 on suspicion of plotting to overthrow the regime; at least 30 officers are said to have been executed, including Brigadier General Ata Samaw'al who is said to have been the commander of the Special Communications Unit attached to the Office of the President.

13. Other reports of mass arrests followed by many executions were received subsequent and in relation to the attempted assassination of the President's eldest son, Uday Hussein, on 12 December 1996. Arrests and detentions without judicial orders are reported to have numbered in the thousands cutting across all military forces and security services, the Baath Party, tribal leaders close to the President, and even extending to within the President's immediate family.

14. In the south of the country, reports continue to be received indicating that a strong military and security presence remains with arbitrary arrest and detention being commonplace. In addition, there are reports of sporadic fighting between government forces and armed opposition groups with government forces exacting revenge through indiscriminate attacks upon the settlements of innocent civilians.

15. Testimony received from refugees recently arrived from central and southern Iraq confirm that arbitrary arrest and detention remain normal occurrences. Mistreatment in detention, including beatings and other tortures during interrogations, are said to continue to accompany most instances of arrest and detention. Testimony further affirms that corruption of the authorities has added to the arbitrariness of arrests and detentions with money being sought from detainees to buy their liberty and personal security.

16. While testimony would indicate that the penalties of disfigurement through amputation and branding are now rarely if ever applied, the Special Rapporteur observes again that the relevant decrees have yet to be abrogated. As such, decrees prescribing cruel and unusual punishments remain in force.

C. Disappearances

17. The Special Rapporteur has previously addressed this matter in several of his reports (E/CN.4/1992/31, paras. 60-64; E/CN.4/1993/45, paras. 42-49; E/CN.4/1994/58, paras. 26-33; E/CN.4/1995/56, para. 27; and E/CN.4/1996/61, para. 30). To update the matter, the Special Rapporteur notes that the Working Group on Enforced or Involuntary Disappearances has many thousand cases of disappearance in its database which are the responsibility of the Government of Iraq. Specifically, there are 16,199 cases still unresolved with the Government of Iraq so far only having responded specifically to the Working Group with regard to a few hundred cases of which a mere 130 have been clarified. This leaves Iraq with decidedly the worst record in the world. For the tens of thousands of persons who suffer the emotional, social and economic consequences of the disappearance of their loved ones, the persistent lack of an adequate response from the Government of Iraq worsens the suffering.

18. In view of the extremely large number of disappearances in Iraq, the Special Rapporteur remains disturbed by the effective refusal of the Government of Iraq to make any effort to assist the suffering families to discover the fate of their loved ones. In particular, as far as the Special Rapporteur is aware, the Government of Iraq has still not established even a national commission to address the matter, as has been repeatedly recommended by the Special Rapporteur.

19. The database maintained by the Working Group on Enforced or Involuntary Disappearances does not contain the cases of the more than 600 Kuwaiti and third-country nationals who went missing or disappeared after having been taken into custody by Iraqi forces during the occupation of Kuwait. The Special Rapporteur reported in summary with regard to this group the previous two years (E/CN.4/1995/56, para. 27 and E/CN.4/1996/61, para. 30), and in detail in his interim reports to the General Assembly at its

forty-ninth (A/49/652, paras. 12-33) and fiftieth (A/50/734, paras. 18-28) sessions. Since that time, there has been little change in the situation. Specifically, of the 625 files concerning 609 individuals (16 persons were known to have pseudonyms and therefore had two files) whose whereabouts remained unknown, during the last two years only two cases have been resolved: the remains of one person were returned to Kuwait from Iraq on 11 December 1994 and one young woman was returned to Kuwait from Iraq on 15 May 1996. The Government of Iraq has also indicated to Kuwait that the remains of another missing Kuwaiti are known to be buried somewhere in a fairly large area of northern Kuwait; the Kuwaiti authorities are trying to deduce where exactly the remains may be and to recover them.

20. As previously reported, a Tripartite Commission composed of representatives of the Governments of Kuwait, Iraq and the three main coalition Powers (the United States, the United Kingdom and France) meets periodically, pursuant to the cease-fire that concluded the armed conflict, to try to resolve the outstanding cases. The International Committee of the Red Cross (ICRC) also participates in these meetings. While Iraq chose not to attend the meetings of the Commission for a period of two years, it has been attending for the last two years and has supplied information regarding 128 persons, including the three cases mentioned above.

21. On 31 July 1996, the Government of Kuwait submitted to the ICRC for its evaluation the files of an additional 11 persons whom evidence indicates also were taken by Iraqi forces during the occupation of Kuwait and remain missing since that time. Should the ICRC consider the evidence sufficient, these cases will be added to the 607 which remain outstanding.

22. During their mission to Kuwait from 24 to 27 January 1997, United Nations staff members met with several relatives of the missing persons. From these meetings, it is clear that the unresolved situation has had serious effects upon almost all aspects of the lives of the families. Aside from the emotional and psychological effects of deep and prolonged grief exacerbated by the continuing uncertainty over the fate of their loved ones, there are often substantial socio-economic effects borne especially by dependent women. In addition, the prolonged suffering has given rise to negative physiological effects in some cases. These effects, like that of the unresolved fate of the missing persons themselves, must be seen as the responsibility of the Government of Iraq.

23. Some examples of the suffering of family members seem warranted in order to underline the fact that, six years after the liberation of Kuwait, matters are far from resolved for thousands of persons. In one family where the father had died some time before and the eldest son was taken by Iraqi forces during the occupation, the mother has become so depressed that she sits at home suffering constant headaches, high blood pressure, periodic crying episodes and insomnia; the family celebrates no occasions and felt compelled to move from their home so as to escape the environment in which they knew their son/brother. In another case of a young man named Mohammed, the mother is constantly distressed since she is forever reminded of his absence by frequent references (in other contexts) to his name. As a consequence, she has withdrawn, stopped walking, eats very little and has become physically fragile; she has recently been diagnosed as having diabetes which is said to

have been brought on by the stress. A third family had all three sons taken from their home by Iraqi forces in the middle of the night; one son's body was later returned during the occupation to the front door of the house, but twin brothers remain missing and the family is totally distraught. Another family where the father had died of natural causes prior to the occupation lost their only male member when the surviving son was taken by Iraqi forces; given the socio-cultural nature of Kuwaiti society, this has had serious effects on the family. Also among the missing were mothers with young children who are now being raised by their grandparents; the effects on such children as these will be profound.

24. With regard to the responsibility of the Government of Iraq for the fate of the missing and for the effects on their families, the Special Rapporteur had previously concluded that Iraq carries both general and specific legal responsibility. As a general matter, Iraq was responsible for the well-being of all civilians during its occupation of Kuwait. Iraq was also responsible for all persons specifically taken into its custody. As a result, Iraq should cooperate to the maximum extent with all efforts to determine the whereabouts or fate of all missing persons. To this end, Iraq should, inter alia, give access to the ICRC to its places of detention throughout the country (since many Kuwaiti detainees were known to have been taken to Iraq) in accord with the normal requirements of ICRC visits. Failure to do so would be in violation of Iraq's international obligations. Unfortunately, the Government of Iraq has so far failed to give access to the ICRC according to the latter's normal terms of reference.

D. Freedom of opinion and expression

25. The Special Rapporteur has previously reported on the total suppression of opposition opinion and expression (E/CN.4/1992/31, paras. 76-78; E/CN.4/1993/45, paras. 64-66; E/CN.4/1994/58, paras. 47-54; A/51/496, paras. 22-38). In the view of the Special Rapporteur, the total suppression of these freedoms is at the core of the situation of human rights in Iraq. That is, there is an absence of respect for the human dignity of the population as a whole in so far as the dictatorial leadership accepts absolutely no dissent and, in fact, essentially requires that thought, expression and behaviour conform to the tenets of Arab Baath Socialism and the whims of the ruling elite, i.e. President Saddam Hussein and his coterie. Over time, the normally creative sides of civil society have been suffocated such that not only has political dissent been liquidated but cultural, artistic and literary endeavour has also been vanquished if not perverted.

26. In his interim report to the fifty-first session of the General Assembly, the Special Rapporteur recalled again the deleterious effects of certain important laws and decrees, notably: Press Act No. 206 of 1968 which prohibits the writing of articles on 12 subjects including anything that may be deemed detrimental to the President, the Revolution Command Council (RCC) or the revolution; Act No. 94 of 1981 which requires the Ministry of Culture and Information to develop and supervise all aspects of media and culture "in accordance with the principles of the Arab Baath Socialist Party in Iraq"; and RCC Decree No. 840 of 4 November 1986 which prescribes penalties ranging from imprisonment to death for anyone

criticizing the President, the RCC, the National Assembly, the Government or the Baath Party. The Criminal Code also prescribes the death penalty for certain "media crimes" including incitement of public opinion against the ruling authorities; it was reported that four Iraqis were sentenced to death on 28 May 1996 under this provision.

27. It is clear that the Government's control of expression and culture as a department of State through almost 30 years of Baathist dictatorship has eradicated the expression of competing views and ideas and molded a number of young minds to serve the Baath Party and the leadership. Perversely, while the Government has successfully acted to eviscerate the essence of journalism (i.e. independent, accurate reporting and commentary), it has groomed an army of technicians to perform the required functions of propagandists in order to effect a further measure of control over the minds of the Iraqi population. This is achieved not only through the above-noted laws and severe penalties, but also through the ownership of the media itself. The Government owns both national television channels, both national radio channels, the main newspapers, and employs the "journalists" who work for them who have formal status of civil servants. Private media are subject to strict control and private satellite dishes are forbidden.

28. The Law on Publications is also an important instrument of repression of opinion and expression. The Law requires authorization for publication and imposes penalties for publishing any of a long list of books. The Law also prohibits anything which may damage relations with Arab countries as well as anything that challenges the revolution and its principles, the State, its institutions and its internal and external security. Supervision of foreign publications is no less severe, and foreign journalists must obtain permission to travel within the country and pursue their profession.

29. The practice of the profession of journalism is also controlled by the Government by requiring journalists to obtain governmental approval to work in the field. This is ostensibly due to national security concerns. Iraqi law includes many provisions against "espionage" and journalists who may have contacts with a variety of persons and have access to governmental information are especially vulnerable to accusations of espionage. Specific acts of "espionage" include unauthorized transmission of information to - or even contacts with - foreigners.

30. Not surprisingly, many journalists and other writers have fled Iraq in search of physical security and intellectual freedom. Many currently reside in Jordan. However, according to consistent testimonies received by United Nations human rights monitors visiting Amman in April 1996 and January 1997, these persons report continuing harassment by agents of the Government of Iraq including persons attached to the Iraqi Embassy in Amman. Fear among these persons was heightened with the publication in the 13 October 1996 edition of the newspaper Babil (owned by Uday Hussein) of a list of 60 "intellectuals" (including many journalists and other writers) who had left Iraq and were thus characterized as "traitors". Treason is punishable by death in Iraq.

II. THE RIGHTS TO FOOD AND HEALTH CARE

A. General Situation

31. The Special Rapporteur has reported and commented upon the rights to food and health in all but one of his previous reports to the Commission on Human Rights and to the General Assembly (A/46/647, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a), (b) and (c), and 58 (a), (b) and (c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, paras. 89-98; E/CN.4/1995/56, paras. 44-47, 54, 67 (m) and 68 (c); E/CN.4/1996/61, paras. 30-40; A/51/496, paras. 61-86, 104-106 and 110-115). The situation has been dire for the majority of the population for many years. Given the situation, the Special Rapporteur thus welcomed, in his most recent report to the General Assembly, the signing on 20 May 1996 of a memorandum of understanding (MOU) between the United Nations and the Government of Iraq on the practical arrangements for the implementation of Security Council resolution 986 (1995), i.e. offering "food for oil". At the same time, the Special Rapporteur reported on the still deteriorating situation within the country and the still unimplemented formula.

32. Certainly, the needs of the Iraqi people described by the Special Rapporteur in his interim report, supported by evidence from international humanitarian agencies, remain considerable and urgent. The Iraqi people, therefore, cannot be satisfied with the mere conclusion of an MOU; they need to realize the benefits of this agreement without delay.

B. The "food-for-oil" agreement

33. Subsequent to the submission of the interim report to the General Assembly, the Secretary-General reported to the Security Council (S/1996/1015 of 9 December 1996) that he was satisfied that all arrangements had been made in accordance with Council resolution 986 (1995) to begin the effective implementation of the resolution. Later that day, the President of the Council announced that, in view of the Secretary-General's report, the humanitarian operation had gotten under way. The President also informed the Council that, as a result, the market prices of food and medicine in Iraq had almost immediately dropped dramatically, thus putting an end to black market speculation.

34. Oil began to flow from Iraq on 7 January 1997. Towards the end of January 1997, some US$ 200 million had been deposited in the escrow account of the Banque nationale de Paris. Unfortunately, no benefits have yet been realized by the Iraqi people in need. While funds have been dispersed to the United Nations Compensation Commission and the United Nations Special Commission and reserved for other purposes, the United Nations Sanctions Committee has so far approved only two contracts for the purchase of desperately needed food, i.e. one contract for US$ 50 million worth of Australian wheat and another contract for US$ 21 million worth of Thai rice. Dozens more contracts are awaiting approval from the Sanctions Committee; it

is to be hoped that, after the necessary scrutiny, approval will be forthcoming without delay so that the many in need will soon be able to benefit.

35. According to the interim report of the Secretary-General on the implementation of Security Council resolution 986 (1995) (S/1996/978 of 25 November 1996), a total of $1,320.68 million out of the $2 billion of sales is to be allocated to urgent humanitarian needs. Specifically, $804.6 million are for the purchase of food, $101.3 million are for the purchase of soap and detergents and for spare parts and other equipment for food distribution, $210 million are for the purchase of drugs and medical equipment, $145 million are for the rehabilitation of infrastructures in the electricity, agriculture and education sectors, $44.2 million are to meet urgent needs in the sector of water and sanitation supplies and equipment, and $15.4 million are for health infrastructure and nutritional needs. Of the total, $260 million are to be allocated to the three northern governorates.

36. With regard to the human rights to food and health care on a non-discriminatory basis, the MOU is to ensure an "equitable distribution" of the humanitarian supplies. According to the Secretary-General's interim report, this will be achieved in two ways: in the 15 governorates of central and southern Iraq, the Government will distribute the goods according to its current food rationing system, but will be observed to ensure "the equitable distribution of humanitarian supplies and ... the adequacy of revenues to meet Iraq's humanitarian needs" (para. 26); while in the three northern governorates distribution will be by the United Nations according to "current modalities and existing resources" (para. 20).

37. According to the same report, a total of 151 international "observation and reporting personnel" are to be based in Iraq. They will be divided almost equally between "geographical" and "sectoral" observation and will be assured "unrestricted freedom of movement and access ... in connection with the performance of their functions" (para. 15). Their findings "will be collated, analysed and integrated by the multidisciplinary observation unit, which will include experts in the areas of agricultural inputs and machinery, plant protection, animal health, food logistics, public health, pharmaceuticals, hospital equipment, water and sanitation, education and electricity" (para. 28). It is also intended that "guidelines and standards to ensure effective observation and analysis of the distribution of humanitarian supplies will be established by the unit" (para. 28).

38. The Special Rapporteur is pleased that the supervisory mechanism to ensure equitable distribution has been agreed, particularly in view of the serious allegations previously reported by the Special Rapporteur about the Government's manipulation of the food rationing system. In this connection, the Special Rapporteur is extremely concerned by reports that the Government of Iraq is seeking to limit the effectiveness of the observation system by refusing to allow the stationing of observers in substations throughout the country and by interfering with their freedom of movement by requiring internal travel permits. In addition, it has been reported that the Government of Iraq is insisting that the observers use expensive and insecure communications, thereby depriving the observation system of the necessary security of information required for the effective conduct of its mission.

39. The Special Rapporteur also views with concern reports of delays in putting in place the observation system. Specifically, reports indicate that there has been some delay by the United Nations in recruitment of adequate personnel and also that some technical aspects of their functions (e.g. communications) have still not been resolved with the Government of Iraq. Similarly, it has been reported that the Government of Iraq is seeking to place restrictions on the terms of recruitment of local United Nations staff.

40. Clearly, the needs of the long-suffering Iraqi people should compel the responsible parties to resolve without further delay all outstanding matters standing in the way of the effective implementation of the "food-for-oil" arrangement. The objective of the system of observation and, indeed, the "food-for-oil" formula as a whole is to facilitate the immediate provision on a non-discriminatory basis of foodstuffs and medicaments to those in need in accordance with their human rights. It is Iraq's obligation under international law to facilitate the process.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

41. The Special Rapporteur notes that, based upon the information in his possession, there has been essentially no improvement in the situation of human rights in Iraq. Fundamentally, all power is in the hands of a cruel dictatorship. As such, it cannot be said that any human rights are ensured in Iraq.

42. This said, there is at least and at long last the prospect of an improvement in the enjoyment of the rights to food and health. However, this depends very much on the efficiency of implementation of Security Council resolution 986 (1995) and the efficacy of the United Nations system of observation to ensure an equitable distribution of the badly needed foodstuffs and medicaments. In particular, this requires the free and unobstructed movement of United Nations observers throughout the country. Now that the "food-for-oil" formula has finally been accepted by the Government of Iraq, every effort should be made to ensure that the benefits of the sale of oil do in fact accrue to the very many in genuine and great need. They have suffered long enough.

43. Irrespective of the realization of the prospective improvements in the enjoyment of the rights to food and health, significant change in the situation of human rights in Iraq will only be possible through a radical change in the politico-legal order. Fundamentally, the genuine will of the people must become the basis of the authority of government. This will only be possible as the result of a general process of democratization which would feature enjoyment of the freedoms of thought, opinion, expression, association, assembly, movement and, above all, the rights to life, liberty and personal security. To this end, the Government of Iraq must abrogate all laws and decrees prescribing cruel, unusual, disproportionate and otherwise violative penalties. It must also abrogate all laws and decrees which repress the free expression and exchange of views and ideas. At the same time, the security apparatus and all other aspects of government, including the executive branch, must be brought under the rule of law.

B. Recommendations

44. In concluding that there has been essentially no improvement in the situation of human rights in Iraq, the Special Rapporteur again refers to all his previous recommendations, which remain valid.

45. In addition, and in particular, the Special Rapporteur recommends:

(a) That the Government of Iraq cooperate in the search for missing Kuwaiti and third-country nationals by allowing the ICRC full access to places of detention throughout Iraq in accordance with normal ICRC terms of reference and practices;

(b) That the Government of Iraq cooperate fully in the implementation of Security Council resolution 986 (1995) in particular by resolving immediately with the United Nations any outstanding technicalities which may be obstructing efficient and effective observation of equitable distribution and ensuring the free and unobstructed movement of observers throughout the country.